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ONTARIO ADVISORY COMMITTEE ON CONFEDERATION

M E E T I N G

held at



The Frost Building, Queen's Park, Toronto

on

FRIDAY, MARCH 20, 1970

VERBATIM REPORT OF PROCEEDINGS

ONTARIO ADVISORY COMMITTEE ON CONFEDERATION

Meeting held in the Board Room, 6th Floor,
The Frost Building, Queen's Park, Toronto,
on Friday, March 20, 1970.

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PRESENT:

Mr. H.I. Macdonald (Chairman)

M E E T I N G

Prof. A. Brady

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Prof. D.G. Creighton

Prof. J. Conway

The Frost Building, Queen's Park, Toronto

Prof. F.A. Fox

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Prof. R.G. Moore

Mr. V.A.M. Anderson

Mr. F.M. Callaghan

Mr. P.W. Stevenson

Mr. A.A. Farrell

Mr. E. Updegraff

Mr. C. Boer

Mr. G. Rosen

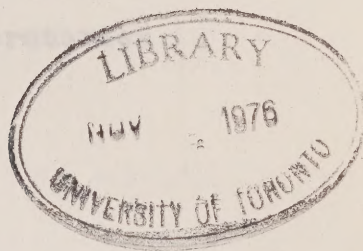
Miss L. Delfour

Mr. P. ...

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Co-Secretaries

Mr. E. Greathed)

Mr. C. Beer)

Mr. G. Posen)

Secretariat

Miss L. Balfour)

Mr. D. Hobbs)

Mrs. J. Wilensky)

Mr. J. Wouters)

--- At 9:50 a.m.

THE CHAIRMAN: Sorry to be delayed a moment. I just had a budget fast-ball thrown at me!

We have a smaller group this morning but, nonetheless, one of high quality, I am sure. Dr. Forsey hoped to be here, but he did warn me he might have to go back into hospital for a few days, and I expect that is the reason for his absence in fact. One or two others are in the happy position of being out of the country on vacation, which is a winter status to which I have long aspired but never expect to reach. We have one or two others who are delayed by other business.

PROFESSOR CREIGHTON: Is the President of Trent University so happily employed?

THE CHAIRMAN: I believe he is.

PROFESSOR FOX: Where is he wintering, Palm Springs?

PROFESSOR CREIGHTON: Or Antigua.

THE CHAIRMAN: It may be at Stoke-on-Trent, I do not know.

Item number one is "Chairman's Remarks". I do not think I have any remarks which will not be covered in fuller detail in subsequent items. Perhaps we might go on directly to item two, which is a report on the Constitutional Conference of December 1969, the Federal-Provincial Conference of February 1970, and the forthcoming program of

work in the constitutional review.

Before I do come to that, although we shall be hearing from him in a moment, I would like to introduce and welcome Mr. Bill Anderson to the meeting this morning. Mr. Anderson is still, I guess, in relative terms, the new Chairman of the Civil Service Commission in the Government of Ontario, but also the newly-appointed Ontario Chairman of the Ontario-Quebec Permanent Commission. He will be speaking to us today, and because of his increasing involvement and very great interest in the affairs with which we are concerned, I have invited him to stay throughout the day as long as he may be able.

Now, Don or Ed, have you anything to report?

MR. STEVENSON: If I may take the liberty of passing it over to Ed to make a report, I will see if he misses anything.

MR. GREATHED: Mr. Chairman, I am not so sure that there is a great deal to be said about the December 1969 conference. Most people probably had the opportunity of seeing some of the proceedings on television.

The Prime Ministers did continue their discussion of the distribution of powers and, in particular, looked for the first time at the question of social services and income security; then went on to their discussions, which they had before, on

the spending power, on the taxing power, and on regional disparities.

I think it is fair to say that after that particular conference the view of at least the public and the media was that the whole constitutional review process had seemed to bog down rather badly. I am not so sure that that was the view of some of us who were at the conference. I am not so sure that those of us who have watched these proceedings and participated in them rather closely in the last few years, came away with such a pessimistic view as that, but there is no question that we are getting into a much more difficult area in the distribution of powers, that the going is harder, and that consequently the kind of tangible progress that perhaps the media and the public at large expects from the constitutional review process is not as evident.

Nevertheless, I think there was some concern that the constitutional series had gone on without any, at least, formal discussion among the first ministers of some of the present functional problems in the federation.

For this reason, we moved into the closed session of the Federal Provincial Conference covering Item 70, where for the first time in four years (I guess almost five years) the first ministers sat down to discuss three very specific problems which were concerning all governments.

We began by discussing the economic situation; we moved into the area of water pollution and, in particular, a discussion of the ramifications of the Canada Water Bill; and, finally, into a discussion of the report of the Tax Structure Committee.

I think everyone felt that the results of that meeting were very useful indeed, and that some substantial discussion had gone on and the air had certainly been cleared on a variety of problems, which, I suppose, to many people, seem to be more pressing, more urgent, more (to use the contemporary term) relevant than some of the constitutional concerns. However, I think it is safe to say, at the same time, that the two series of conferences cannot be divorced, and that there will continually be an overlap among the subjects of the two.

Moving just a little bit into the future, we are going to be meeting next week in Ottawa; the Continuing Committee of Officials will be having its tenth meeting. At that meeting we shall be discussing a new area of the distribution of powers. First of all, as the agenda is set out, we shall be discussing the whole question of methodology, the whole question of the approach to the distribution of powers: how do we do it most efficiently? Under item seven of your agenda today, we shall be getting into that in more detail, so I will not discuss it further now.

We shall also be discussing the new subject in the distribution of powers -- economic growth, which is the first sub-heading under the larger heading of economic powers.

We shall then be discussing the two subjects which were specifically referred to the Continuing Committee officials by the Prime Ministers in the December conference. First, to use the language which is used in the agenda, although it is not the language I would choose myself, I think the expression is: "The non-enforceable constitutional obligation regarding the reduction of regional disparities". I leave you to figure out that particular one. The problem really is: How does one express the whole question of the reduction of regional disparities in the constitution as an objective or in a series of provisions that are somewhat more specific and yet perhaps are not judicially enforceable?

We shall then move into the question of paramountcy as regards the question of public retirement insurance. This is a question that arose at the December conference. I think to the surprise of most delegations, it was raised by the federal government in their paper on social services and income security. I think it is in relation to Section 94(a) and a proposed change there whereby the federal government is suggesting that in the area of public retirement insurance

the federal powers should be paramount. I expect we shall have a fairly detailed report from the federal government as to just what they have in mind here. Quite frankly, we are not absolutely sure what they have in mind.

In addition, of course, to this meeting of the Continuing Committee of Officials, we have had meetings earlier this year, which will be going on later next week and so on, both on the sub-committee on fundamental rights which has been examining in somewhat more detail the various possible ways of entrenching certain rights; while the sub-committees on the taxing questions have been meeting also to try and clarify some of these matters both for the Continuing Committee of Officials and for the Prime Ministers.

I expect that various ministerial committees, those on fundamental rights, official languages, on the Senate and on the judiciary, although this is not confirmed yet, will probably meet sometime in the spring. I think that the best word we have now in terms of the next meeting of Prime Ministers in the constitutional series is not until September or October.

That is really by way of a somewhat factual report, Mr. Chairman. I do not know if Don has anything to add.

MR. STEVENSON: Maybe just one word. I think perhaps Ed left the impression that all was

sweetness and light at the Prime Ministers' meeting in February, but, of course, a lot of the Premiers came there to talk about money but did not get any, so it was not all that happy from their point of view.

The summary report of the work done for the Tax Structure Committee was made public at the time of the Prime Ministers' conference. I think we would want to make sure it went to at least the economists on the Advisory Committee, but if anybody else would like a copy of it we can arrange to have it sent. It dealt with two main subjects: a projection of revenues and expenditures from all governments for the next two years; secondly, a review of shared cost programs.

The federal government's main concern was how to put a little more teeth into controlling costs in Medicare, hospital insurance, post-secondary education. The provinces' main concerns were how to avoid federal unilateral allocation of funds, imposition of ceilings and termination of grants. There was a general declaration of support for attempts to control costs under the first part; I think very little progress on the second part.

PROFESSOR CREIGHTON: Has this been sent out, did you say, only to ---

MR. STEVENSON: It has not been sent out yet, but if members would like it I am sure the secretariat would make it available to everybody.

THE CHAIRMAN: Perhaps, Ed, you could do a circular of those documents in the usual manner, asking people to check off those that might be made available to them from those documents.

PROFESSOR LEDERMAN: On that subject, Mr. Chairman, I understand, though I do not know whether they are at a confidential level or not, that there are papers by Dr. Schmeiser and Dean Tarnopolsky on fundamental rights.

THE CHAIRMAN: I do not recall seeing those. Have we seen them, Ed?

PROFESSOR LEDERMAN: They may not be circulating yet.

MR. GREATHED: We have had them within the Continuing Committee, but they have not gone outside of that.

MRS. WILENSKY: Not the Continuing Committee; the Ministerial Committee on Fundamental Rights. Circulation was restricted to that particular ministerial committee.

THE CHAIRMAN: We could ascertain, Bill, what is the extent of the confidentiality.

PROFESSOR LEDERMAN: When those are available on any term to us, I would like to see them.

THE CHAIRMAN: Surely. Two or three other matters occur to me, looking into the future a bit. I think at the February conference there was an implicit feeling not so much that the constitutional review should be slowed down, but

that greater weight should be attached in the prime-ministerial meetings to (for want of a better term) the practical questions of Canada and confederation that were on the scene. As a result, the most likely timing, I believe, for another meeting of first ministers on the constitution will be in the early autumn. There is some suggestion of June, but it seems more likely now in the early autumn. I think also there was a sense that the Prime Ministers should meet at least once a year on practical questions as they accumulate, whether they be economic matters or matters of pollution or boundary problems, or what-have-you.

Then, of course, in addition the finance ministers have agreed now to meet regularly on a quarterly basis, so that rather than the annual meeting of finance ministers -- which, in a sense, often tended to be an ex post discussion of their prior intentions -- a quarterly meeting will give a little more opportunity to look ahead and to take account of the other governments' intentions in fiscal planning for each government.

The interesting question, I think, that is going to loom (it is only a personal opinion) over the course of the next year will be some very serious questions about the economy in Canada. There was quite a bit of difference of opinion at the February conference in Ottawa on two points.

One was the position taken by the Ontario government in expressing concern about over-kill in monetary and fiscal policy in terms of the analysis we had done of the underlying trends in the economy, which seemed to be pointing to unemployment, economic slow-down and so on. The other was the regional question, where generalized federal economic policies were appropriate to inflation in the general case, but necessarily appropriate to all regions of the economy. The indications are, I would think, of the economy ahead that we are going to perhaps face some very difficult problems which may well be front and centre in the next year. There have even been suggestions made to me in some quarters that I would respect, that we ought not to be dismissing from our minds even considerations of another devaluation of the Canadian dollar in the next year.

If all of these things go on, it will, I suspect, make it that much more difficult for the constitution to compete for centre stage in the discussions.

Finally, among Canadian problems (again a personal opinion) I think that more and more we are going to be concerning ourselves and Canadians are going to be concerning themselves with questions of national identity and where Canada and confederation is going. I think, Professor Creighton, you would agree with that proposition

from what I have read of your recent work. Just the other day I had a very interesting letter from John Conway expressing some concern about when we were going to be looking at the future of Canada and perhaps some wider matters to do with confederation.

It has raised in my mind some interesting questions about the future advice that the Ontario Government should have and, in turn, the future of this Committee. Whereas perhaps we can put a narrow constitutional interpretation on our terms of reference, which are to investigate those matters concerned with confederation, there are also all kinds of other questions arising out of the workings of the federal system bearing on our national identity, in which matters the Government of Ontario or any provincial government plays a very large part. I think about the whole business of control over our resources, our industrial arrangements and a number of other questions.

Then, of course, I suppose if you carry it further afield, John, it takes you into international boundary questions, international water questions, and so on.

One always worries in this kind of exercise, therefore, how much of the last war one is fighting and how much one is truly looking ahead to see where the country is going and the kind of things that should concern us.

I think tax reform is another area in this context, where we have tended to be worrying about reform of the tax system in terms of tidying up some of the problems of the past; but it is a very interesting question to put the matter the other way around: What kind of economy, what kind of society, what kind of institutions do we wish to develop and encourage in this country, and then what kind of tax system should be devised to support that, rather than the other way around?

Once again, this is perhaps going a bit beyond the terms of reference of Item 2, but these are a few questions that have been running through my mind, and, I would detect from what I have heard, through the minds of some others on this Committee. I would certainly appreciate your advice or your guidance on that, particularly, as I say, since if we define national leadership at the political level to include both the federal and provincial governments, I do think there are considerable responsibilities on a government of the size and centrality of the Government of Ontario to have some position on those questions.

PROFESSOR CREIGHTON: Mr. Chairman, I must confess I was extremely interested in the last part of your observations. I wonder when it was that this change in sentiment began to appear in the conferences that are being held.

Two and a half years ago when Mr. Robarts

called the Confederation of Tomorrow Conference, we were all informed in the most impressive terms that the issue of the utmost practicality and most desperate urgency was the reform of the constitution. We have subsequently got launched upon this gigantic reforming constitution review which, after two and a half years, has now ground virtually to a complete halt by the testimony we have had this morning. In the meantime, as you say, other issues, which have always seemed to me to be much more important, have loomed larger and larger. It is perhaps a little complacent to say that one was right, but I think I was. I do not think this will continue to be a central issue of the future, this reform of the constitution. I think it will subside and others of greater importance will take its place.

THE CHAIRMAN: Professor Creighton, this raises a very important question in my mind about what has happened along the way, and what Canadians think has happened along the way. If we get an opportunity, Ed, I would like the staff sometime to go back and look very carefully through the papers and discussions leading up to the Confederation of Tomorrow Conference and the immediate aftermath; because I think along the line things slipped gear and perhaps we got carried in a direction which perhaps necessarily was not the one we at least embarked upon.

Let me explain what I mean. Recently it has been alleged that the provinces started all this business of the constitutional review, and then last winter we were backing away from it, leaving the federal government with the need to retain the carriage of the process.

I certainly remember very very well, and, I think, fairly completely, the discussions we had here leading up to the Confederation of Tomorrow Conference. I hope this distinction is not naive, but I always thought myself that the thing that Mr. Robarts was asking for at that time was to stand back and to take a look at where the Canadian federation was going and where Canadian federalism was going.

To me that is an infinitely broader thing than the mechanics of the constitution. I do not use the word "mechanics" necessarily in a limiting sense, but in terms (shall we say) of means rather than ends.

Throughout the preparation for the Confederation of Tomorrow Conference and, indeed, throughout the conference, the focus at all times was attempted to be placed on the goals of Canadian confederation, of federalism in Canada, and the analysis and assessment of what the problems were of all the country. I remember at that time the Prime Minister of Ontario saying that it had become a three-cornered hat, in a

way -- Canada, Quebec and Ontario; but this was not so at the time this country was created; that all parts had a concern, and influence and an input, and could we get back to looking at the national issues.

At the same time, the federal government was very apprehensive, it is fair to say, about us getting carried into constitutional matters. I guess, Don, you were with me when we went on that interesting mission to Ottawa when we met with Gordon Robertson and the then Minister of Justice, Mr. Trudeau, who were very concerned and very interested or anxious that we not get into a constitutional or fiscal discussion at this time. We convinced them, I believe, satisfactorily, that our intention was to open up the question of goals and the wider matters of confederation.

The question that interests me, looking back, is this. Would it have been possible to continue on in that way, or was it too woolly or too philosophical? Because what happened was that the February Constitutional Conference, the first Constitutional Conference, followed, and immediately because there was to be a conference there was an obligation to try and get down to nuts and bolts on this and that, and we launched into the constitutional review process and the constitutional process, and we never picked up again (to my satisfaction at least) what for want

of a better term I speak of as the functional problems of the system -- many of which practical problems, as I think the government said in several statements, could be treated within a given constitutional arrangement if there were a political will to do so and the constitution was not something that was an ultimate matter but a vehicle which we created in the first place and therefore we could presumably work within it if we wished.

However, things take on a momentum, and there is an expectation by politicians and officials that we have got to have something very practical to produce, so we were launched well into the constitutional review process.

I suppose what happened along the way is that once you get launched into a thing like this, the press and everyone else expect it to be done yesterday, and they keep alleging, therefore, that if you are not going at an electrifying pace you are lagging, no matter how often you say it may take a long, long time. I suspect that in part, as a fortification against that charge, the politicians recognized the need to resume the initiative again and get back into some of these practical questions. Now I think the interesting thing is that we are back, as you say, where we were before, Without leaving aside the constitutional process, having got back into the practical arena, so to speak, is it going to be

possible to carry on a momentum there and truly to deal in an effective way with some of these national, functional problems, whether they be pollution, or freight rates or boundaries or, indeed, the more profound questions of national identity? I do not know.

PROFESSOR CONWAY: Mr. Chairman, I have become increasingly disturbed over the past couple of years. Mr. Trudeau has defined publicly this country as a client state of the American Republic, and I am not prepared to accept that.

THE CHAIRMAN: In those actual terms?

PROFESSOR CONWAY: Of course, he has said that we can only be ten to fifteen per cent independent in the continent. He has actually said that our position vis-a-vis the United States is that of Poland versus the U.S.S.R. That is on record, and I do not agree with it and I think it is wrong. As you know, all that is chauvinistic, and he is apparently not interested in ^{the} economics of autonomy for the country.

I just do not like the definition of Canada which the federal government has been making over the past couple of years. It is done with intelligence and integrity, but I think it is wrong.

I think the United States is getting into such a terrible condition that we should have some assertion of responsibility and power on this

continent other than that of a vassal state of the American empire. I do not agree with that, and I think if we simply continue to discuss only these very important problems of economics and so on, we are just discussing a philosophy that is continental and we are not defining any position for Canada.

If that is what Canadian people want, that is what they will get, but I think it is wrong. I do not like the way the present administration in Ottawa is defining this country.

At York we are getting a terrific attack from the college newspaper because we are said to be a "branch plant" of the American university. I do not think we are and I do not think we should be; but I think if we talk only in economic terms, by the very logic of that kind of discussion we are just being a branch plant of the American economy.

I do not know what the answer is, but I just wish, as I did in my letter to you, to express my distress at the way things have been going this past couple of years.

PROFESSOR LEDERMAN: Mr. Chairman, I would like to make some supplementary remarks to what you and Professor Creighton have been saying on the review process as a whole.

I think, looking back with hindsight really, that the major importance of the Confedera-

tion of Tomorrow Conference was that it was the break-through in public conferences and that the press, radio and television were there.

I do not mean by that that I think we can settle the problems of the country in a series of public conferences of that type, but I do not think we should overlook what has been accomplished by this publicity.

The Confederation of Tomorrow Conference was followed by three (am I right?) public conferences under federal auspices, and there was considerable disillusionment being expressed in Ottawa in December at the last conference about the publicity. Yet I think that because of the publicity these four conferences have had, there is now a much more general and much better realization in the country of what a complex thing you do when you open up the constitution for review, what an immensely complex operation it is. I do not think that appreciation was there to start with.

If you have read, as I am sure many have, the two days of debate in the Federal House of Commons on the setting up of the Constitutional Review Committee, you will see that everyone from every party was admitting at least four or five more years in the constitutional review process. I think even Mr. Bertrand's latest target date is 1974, is it not?

THE CHAIRMAN: He expects to have, I think, another four years ahead to see that through.

PROFESSOR LEDERMAN: Anyway, the realization and appreciation of the immense complexity of this, I think, is now getting through. It is even getting through to editorial writers and news correspondents. There were a few more perceptive comments in the press in December to this effect, that it was the immense complexity of the thing that dictated this slowing down. It is not really slowing down; I do not think there was ever a speed-up. The immense complexity of the thing is coming home.

The corollary of that is that the day-to-day business of the country has to go on within the confines of the existing constitution; and if everybody is admitting that we are four or five years off the re-writing, you must get on with our current problems.

I think this is an entirely healthy development, and I do not think the constant meetings of the officials and ministers are time wasted at all; because the focus can easily shift to making the existing constitution work, and, indeed, you can see this happening right now at the February conference of first ministers.

I think there is going to have to be a mixture of open and closed conferences. I

think probably the function of the open conference, to bring home to the country the complexity of this business, has been accomplished or served, and we do not need any more public conferences for that purpose. Probably there will have to be a series of closed conferences, where more flexible negotiation is possible; then an interspersing of public conferences where there is some sort of reporting of where we are, with reasons.

The only thing I would add to that is that I do not think we are going to end up with any major re-writing of the constitution. I think we will end up with a few changes here and there; and they will have to be substantial enough and be good enough looking in appearance that the political leaders will be off the hook, so that they will be able to say to our people: "Here are some important changes of a constitutional nature which have resulted from this process". I do not think we either need nor are we going to get a major re-writing.

PROFESSOR BRADY: Really significant changes may occur, in fact are beginning to occur, and in four years we may look at a somewhat different constitution in many ways; perhaps not the basic groups, but in details it will look different.

PROFESSOR LEDERMAN: I think we are changing it by the constitutional review process

without formal amendment; the process itself is going to have unexpected and unintended results, and I think they will be good results. I am agreeing with you, I think, Alec.

MR. GREATHED: Mr. Chairman, if I could just add a footnote to what Professor Lederman has said, one of the things that has certainly struck me about the constitutional review process is the rather striking parallel between the process as it has gone on and the developments that have occurred in that forum, with the same sort of process that has gone on in this Committee. I think that the feature of the constitutional review process that is lost and forgotten is that the eleven governments of this country have never sat down in such a systematic fashion to look at the existing constitution. I think that it is safe to recollect that we probably spent the first year or so simply educating one another in the various views and opinions that we had, in much the same way as I recall this Committee did within itself in coming to grips with what it is that was concerning the country and what seemed to be the major issues.

This process, I think, by definition is a very long one, and that we have now completed that in the constitutional process in much the same way as the process has been essentially completed within this Committee. We are now

coming to grips with some of the very knotty problems indeed, the most difficult problems, relating to distribution of powers. I do not think it is any surprise that this activity does not proceed at break-neck speed.

PROFESSOR FOX: Do you want to extend this discussion?

THE CHAIRMAN: No, I was rather thinking that we had perhaps had a good wrap-up on it, but do not be inhibited by that.

PROFESSOR FOX: No, I will keep my remarks to later. It seemed to me perhaps we were moving into Item 6, and I did not want to extend it.

THE CHAIRMAN: That is it, I really wanted some background here. Just to conclude, as Bill Lederman has said, because this work may not be front and centre all the time does not mean it is not going on and that the process is not going on, like many of the processes of government. I think that is the situation we will find; we will be working away at it and it will take some time, but that perhaps does not diminish its importance.

Perhaps we might go on to Item 3, and I would introduce Bill Anderson to report to you on this subject and to discuss it with you. Mr. Anderson, as I mentioned, has come within the past year to the Government of Ontario after a

distinguished military career and being a General in the Canadian Army; and without embarrassing him, may I just say how very pleased we have been at his arrival and his interest and support in this whole area in the work he is doing.

Bill, perhaps in addition to the Ontario-Quebec Permanent Commission and the report on that initial meeting, you might be kind enough to go on a bit and describe some of the steps and progress now on the task force reports and the general bilingual policy in the government.

MR. ANDERSON: Mr. Chairman, to deal first with the Ontario-Quebec agreement, on reading myself into the background of this agreement, I became quickly aware that I am this morning in the presence of the authors of it in many ways, that is, from the Ontario side, this Committee and the cultural sub-committee of it having had so much to do with suggesting that this would be useful initiative. Time will tell how useful it will turn out to be, but I would like to give you an encouraging preliminary report.

You will recall that the agreement was signed last June. It travels under a bit of a misnomer as to its title; that is the first thing, I think, that we have all come to realize, and probably the authors knew this from the start. It is called "An Agreement on Cooperation and Exchange in Educational and Cultural Matters",

but when you look at the text it has become very evident to all of us working on it both in Ontario and Quebec that it extends much wider than this. I think I do/not the press have understood this, and at the first press conference we had it was clear that they had not.

It deals in four fields. The headings in the agreement are languages, government administration, education and cultural affairs. Under the heading of "Languages", it was agreed that in two important fields each province would take action within its own boundaries -- nothing much to do really with cooperation and exchange, although there might be some areas of cooperation and exchange.

Article I of the Agreement says that within each province the governments will provide to the public services in their own language to the extent feasible in both English and French as required. This really has not much to do with cooperation or cultural exchange, but it had an awful lot to do with the image of each province in the federal-provincial arena. I will be coming back to that, if I may, in a few minutes.

The other article under "Languages" had to do with the opportunity to be educated in one's own language, and I do not need to review with this group the steps that have been taken in

Ontario to honour that undertaking.

Under the heading of "Government Administration", which I think most people in the private sector would agree is not synonymous with cultural activity, there is an immense field for cooperation and exchange. After all, both governments are concerned, and government services are concerned, with providing an extremely wide range of services to their people. It is not a question of language; it is a question of responsibility for providing services. Governments with problems can benefit greatly, whether they do it in the same language or a different language, by cooperating with each other, exchanging ideas, exchanging officials, exchanging knowledge of techniques. This area too does not appear in the title, but has turned out to be an area in which there is very lively interest, as I will describe in a moment, on both sides of the border. So much then for the scope of the agreement. All I am saying it is a good deal wider than the title would indicate.

Quebec was quicker than we were in setting up their part of the Commission. The agreement says that the agreement will be implemented by a permanent commission consisting of not less than five members from each side, with two co-chairmen. Quebec named their five in late summer, and the Quebec co-chairman is

an historian of note and a colleague of many of yours -- Guy Fregault, who is the Director General of Cooperation (is his title) in their Department of Intergovernmental Affairs. He is their co-chairman for the Quebec-France agreement and for their relations with Louisiana and with New Brunswick. The other four members of the Quebec side of the Commission are all senior government officials, no-one from the private sector in terms of education, arts or culture.

We have much more recently named our team consisting of myself as the Ontario co-chairman. We went to one additional member; our total delegation is six compared to their five. We matched them, so to speak, in government officials pretty well department by department. Don Stevenson, for example, is a member for us, and matches off their Department of Intergovernmental Affairs.

We added one non-official probably well-known to you, Roland Beriault, who is late of the Department of Education here in Queen's Park and is now the head of the Secondary Separate School Board of the region of Ottawa. It was thought a good idea to have one non-official Franco-Ontarian as a member of the Commission.

The Commission is to meet not less than twice a year, alternately in each province, with Ontario to be the host on the first occasion.

The first meeting was here in Toronto on the 5th and 6th of this month. We held it in the Science Centre, which turned out to be a very solicitous choice. It allowed Quebec to see something of this show piece, and provided an excellent forum, as I am sure all of you know, for a conference of this sort.

I had placed before you a copy of the press release which sets out in some detail what was discussed and the understandings reached. This being the first meeting, (I will only refer to the highlights) it was really a "get to know you" meeting, and an opportunity to review the agreement article by article, to set up those working groups that would be necessary to really get to grips with the projects -- in short, to set up the apparatus that would feed the Commission to the point of making decisions in the future.

I will return to Article I, the bilingualism program in Ontario, as a separate subject in a few moments, if I may.

In the field of education generally, there was a lively interest by Quebec in examining techniques: how do we train teachers, how do we approve text books? -- that kind of thing. They want to send a delegation of chosen officials to our teachers' colleges and to the Department of Education to discuss this kind of

thing.

There was a specific undertaking by the two Premiers when they signed the agreement, that there would be an exchange of fellowships, ten on each side, to be arranged, and this was specifically approved at the meeting -- at the post-graduate level, \$5,000 each, Ontario providing ten for Quebec graduates to work here, and Quebec ditto on the other side.

In the field of government administration, there was an astonishing interest (astonishing to us, I think) shown by Quebec in virtually every field. I have mentioned the text book thing; and such techniques as: "How do you actually judge the text books and approve them?" They want to send a delegation to find out more about how we handle our municipalities; what is involved in this regionalization that is going on in Ontario. They have a steady interest in Land and Forests, a steady interest in the highways techniques; quite a lively interest in exchange of views on how best to provide service to the public. I have no doubt that this is going to continue at a pretty brisk pace.

This interest was not, I should say, on one side, but I think perhaps this Committee would be most interested in the attitude of the Quebecers towards the Commission.

In the field of cultural affairs, they

came in a way that the Ontario Government could never do, armed with a list as long as your arm of cultural artistic groups that were quite prepared to come anywhere in Ontario, with a price tag attached -- an extremely well-documented dossier by the Department of Cultural Affairs. I do not need to tell you how difficult it would be for an Ontario Government official to go to Quebec armed with the same kind of shopping list, and to say: "Who would like a couple of xylophone players?" (Laughter) There were soloists, there were symphonies, there were xylophone players, and I think there were jugglers. There would be the whole lot and all beautifully documented, John, was it not?

MR. STEVENSON: Amazing.

MR. ANDERSON: Saying exactly what these people were prepared to do, how many in the group; some were folk singers, some jazz players -- the lot. There was a very lively concern to get them into Ontario.

To get down to some more prosaic brass tacks, we set up working groups to examine how best to manage these various programs.

They were interested in finding out how we trained civil servants, and they want to exchange vacancies on the new staff development school that they are setting up and the staff development courses that we run. We put together

a working group to examine this more thoroughly.

We discovered that the financing of the exchange of artistic and cultural groups was an incredible jungle, as I am sure most of you would realize. Quebec, through its external assistance office of its Department of Education, provides a steady subsidy to French-speaking communities in the other provinces.

MR. STEVENSON: Cultural affairs.

MR. ANDERSON: I am sorry, not education -- cultural affairs. They are interested in finding out whether provinces such as Ontario are now going to pick up this slack. They find this a drain on their treasury. L'Association Canadienne-Francaise de l'Ontario gets a substantial subsidy from them, as do other activities (also from the federal government) and they are quite interested in whether Ontario is going to move into this field with money or not.

When we reviewed what money we had spent on cultural and artistic exchange, we discovered that we had spent perhaps \$200,000 on Quebec exchange alone out of the \$300,000 that the Department of Education, Cultural and Educational Exchange Branch, had spent on these exchanges in total to the Caribbean, the other provinces and elsewhere. This money had sometimes gone to bring Quebec cultural individuals into Ontario; sometimes it has been spent to send people from

Ontario into Quebec.

Somehow this has all got to be disciplined. If both provinces are going to subsidize exchange, we have got to decide who is subsidizing the movement of whom. I cannot really give you a definitive report on that. We need a working group, which will be set up, to try to discipline this question. They have established in Quebec a national library, as they call it, and this, like the Library of Congress, is by law entitled to receive and does receive (I think it is) three copies of every book published in the province. They are prepared to make a copy of every book published in the province available to us if we will only designate the national library that we would like it to go to. They would also be more than happy to receive official copies, so to speak, of books published in Ontario, on the same concept. We have got to examine how best to discipline this question because obviously there is merit in an exchange of this sort.

The impression I would like to leave with you about our first meeting, which was clearly exploratory and therefore produced not too much to report upon of a specific nature, except for the fellowships, is that Quebec is obviously interested in the agreement from the point of view of how they can benefit from it, how their government apparatus can be improved by contact

with the experience of others. I have no doubt that this is going to continue well into the future.

One gets the impression that they feel quite isolated, and that as they try to bring themselves to the peak of efficiency which they identify in distant fields, they are anxious to pick anybody's brains to find out how best to run things.

I hope we can be helpful, and I have no doubt that we will benefit from this exchange in the government administration field as well. The artistic and cultural exchange activity, I am sure, will go along at a pretty good pace. After all, it has been going along at a pretty good pace without the benefit of the Permanent Commission at all, and I hope we shall be able to stimulate this and to discipline the government financing of it from both sides a bit better.

To turn to Article I, the bilingualism program in Ontario, I think this was not recognized by some as being very much the legitimate interest of the Permanent Commission. Ontario, as you know, has been concerned with its own bilingualism program for some time, and a little over a year ago set up four government task forces to examine what the policy and practice should be in the government service at large. These task force reports were received by the government some time ago (Federal-

Provincial Affairs can document the dates better than I) and the government has been reasonably silent on what it intended to do about them, until March 4th last when Mr. Robarts in the debate on the Speech from the Throne said that the government had decided to implement the reports of the task forces (he has not yet publicized what they say) and that I, as co-chairman of the Ontario-Quebec Commission, would be responsible for coordinating the implementation program within the government. It probably is not of concern to you, but I am at great pains within Queen's Park to distinguish between these two tasks, because I think it would be wrong to get them entangled.

It is not much of Quebec's business how we implement bilingualism in Ontario; it is of interest to them that we do, and it will be of interest to us no doubt how they reciprocate in respect of their minority groups.

So what I am saying, in a way, Ian, is that I am appearing before you wearing two hats -- the Ontario-Quebec co-chairman and the coordinator within Queen's Park of the government's program on bilingualism.

Perhaps I should add a postscript about the Permanent Commission on Finance. The agreement said there would be \$150,000 at least from each province devoted to the implementation of the agreement. There has been a fair amount

of confusion as to whether this was additional to everything that has already been spent annually on Ontario-Quebec contact, or whether it simply represents an indication of what might be regarded as the minimum to be spent. I think we have pretty well resolved this now, and it seems to be generally agreed, both in Queen's Park and in Quebec, that we are already spending more than this; that we will go on cultivating contact wherever there is a mutual will to do so; and that the role of the Permanent Commission will be to stimulate this where there is a will to do so, and to make the legislation of government on both sides of the border more effective in the implementation. We will keep the books and will report to both governments what the sponsoring departments are spending on Ontario-Quebec relations.

That, in a rambling sort of way, Mr. Chairman, describes what we have done so far in the implementation of the agreement, and describes where we stand on the threshold of a Queen's Park program of bilingualism within the government service.

THE CHAIRMAN: Are there any questions?

PROFESSOR MEISEL: I would like to ask rather a nit-picking question. To what extent is Quebec subsidizing the Franco-Ontarian program; do you know the figure?

MR. ANDERSON: I do not know it offhand,

but Fregault had a quiet conversation with Mr. Davis, who was representing Mr. Robarts at a little ceremony we had where a copy of the economic atlas of Ontario was presented to their part of the Commission, in which he promised to send these figures to Mr. Davis. I am afraid we have not researched this enough yet. Once we get it, I am sure there is going to be an important decision to be made here in Queen's Park as to whether we are going to get Quebec off the hook and subsidize Franco-Ontarian artistic and cultural groups, with all the delicate political problems that will raise in Queen's Park; or whether we are going to pat Quebec on the head and encourage them to carry on.

I think the other difficult federal-provincial problem that will undoubtedly arise is the quite remarkable initiative that the federal government has taken to move money right into this field which many would shriek from the house-tops was strictly provincial. Who remembers, what is the sum that they recently gave to the Franco-Ontarian Association?

MR. STEVENSON: Charles, you had some figure, did you?

MR. ANDERSON: \$40 or \$50 thousand.

MR. BEER: No, with a promise ---

MR. ANDERSON: With a promise of more next year.

MR. BEER: Much more.

MR. ANDERSON: So the Franco-Ontarians have divided Ontario, for their own purposes, into some eight regions, and there are some eight amateurs now hired to stimulate the life of the French-speaking communities in the province. Three of these are on the payroll of the Department of Education of Ontario. The other five are hired by the Association with money that they got from the federal treasury. This is a windfall that has stimulated them to great activity. It is hard to believe that it will not become an issue for discussion at the federal-provincial level before too long.

PROFESSOR MEISEL: With presumably an agency in Westmount.

MR. ANDERSON: There is no Roland Beriault from Westmount on their side of the table, I notice.

PROFESSOR CONWAY: You mentioned Quebec and Louisiana. Can you tell us something more about Quebec's involvement with Louisiana and what the province is trying to do there?

MR. ANDERSON: The impression I got from talking to Fregault is that they would like one to understand that the initiative is all on the part of the French-speaking community of Louisiana.

PROFESSOR CONWAY: Indeed?

MR. ANDERSON: That they felt isolated

and deprived, and that when they see manifestations of world-wide Francophony -- it is a lovely word, is it not? -- the French-speaking community have said: "If we are to get netted into Francophony, where do we do it?" and it ought to be Quebec.

PROFESSOR CONWAY: I would love to know more about that. The French-speaking community in Louisiana has been remarkably silent for something about a century.

MR. STEVENSON: Although Mr. Fregault is certainly saying that it seems to have come up out of the swamps in the last four or five years into quite a bit of activity as an organized group.

THE CHAIRMAN: That is the right geographical metaphor. (Laughter)

PROFESSOR CONWAY: I think it is very interesting. I find it very curious.

MR. BEER: Mr. Chairman, on the Louisiana side they are extremely well organized now, and they have committees set up which include former legislators in the State of Louisiana. They just had a two-day meeting on March 9th and 10th, I think it was, following our meeting with Quebec in Quebec City, and the only newspaper comment at the end of this meeting was that there was no communique and that those present at the meeting did not have very much to say. Whether this was because of the fact that Louisiana is a state of the United States we do not know, but

they did have a few days of discussions this month, which was their first meeting of a Louisiana-Quebec permanent commission. Quebec does have a permanent representative stationed in New Orleans now, Mr. LeBlanc.

PROFESSOR BRADY: Do you think, Mr. Chairman, that Louisiana may seek re-union with Canada?

THE CHAIRMAN: I was going to say that I thought John was trying to get us back on the American influence in Canada, in speculating on the current market value of the Louisiana purchase.
 --- (Laughter)

MR. ANDERSON: If I might make a sort of private affirmation of faith, Mr. Chairman, that I think perhaps I ought to say that I believe I am old enough and (hopefully) wise enough to realize that there is no occasion for a starry-eyed concept that this is not going to be a very difficult area in which to make progress in the climate of Ontario. I have no illusions about that. I think the bilingualism program will be an extremely difficult balance between showing no progress at all and showing enough progress to honour the very forthright statements that have been made that Ontario intends to play its part in this.

I was really very pleased to find that there was no difficulty in establishing a cordial relationship with the members of the Quebec

delegation in the Commission, none whatever. There was none of that tenseness that one might expect, none of that shuffling around the ring to find the right corner out of which to operate. I feel sure there was a genuine urge on their part to make the most of this -- to their own advantage. After all, that is what cooperation ought to be for, and there are areas of advantage to us. Certainly in teaching French to our own French-speaking students there are techniques from which we can benefit greatly; and in teaching French to those English-speaking Ontarians who wish to learn French, there is a lot we can pick up, I think, from them, because they are determined to make sure that there are efficient ways of teaching all their Anglo's French.

In case you think that these affairs are in frail hands, you will be encouraged to know that I am ably supported by Charles Beer, who is to be my executive secretary for both of these functions.

MR. STEVENSON: Which we are very sad about.

THE CHAIRMAN: Yes. If Bill did not mention it, I was going to mention that, but I thought perhaps it would be up to him to say so first. One of the sad things about building up a staff in this department, of which I am justly

proud, is the problem of resisting the predatory instincts of ones's colleagues. We are very happy though for Charles and for the program, that this has taken place.

PROFESSOR FOX: I imagine it is especially difficult, Mr. Chairman, to resist the overtures of the Chairman of the Civil Service Commission.

MR. ANDERSON: I like to think, Mr. Chairman, that your generosity was prompted by the identity of the work which we are to do in the best interests of federal-provincial affairs.

THE CHAIRMAN: That is right. We are the archway of altruism. (Laughter)

MR. STEVENSON: Mr. Chairman, perhaps I might just add one word to what Mr. Anderson has said. Before we had our meeting, in some discussions with Quebec counterparts, I detected a fair bit of reserve and perhaps even a little bit of suspicion, about how genuine our side was in the conclusion of the agreement, in the implementation of some of the articles and this kind of thing, partly because of the slowness perhaps and the backwards and forwards progress we had in the last couple of years.

I was talking just a day or two ago to the Quebec Assistant Deputy Minister of Intergovernmental Affairs, who reported to me that when Mr. Fregault went back to Quebec he had made a most enthusiastic report on the first meeting;

that there was certainly a real feeling in Quebec that this was a pretty vital operation from Canada's point of view and from theirs, and they certainly could not be happier at this stage.

---- Short recess.

THE CHAIRMAN: I wonder if there are any other questions you wish to raise with Mr. Anderson on this general subject?

PROFESSOR FOX: Mr. Chairman, may I express my own personal satisfaction, as a member of the sub-committee on cultural affairs, with the progress that has been made. Then may I ask one question, if it is appropriate.

I see from the news release that this operation is now under the Department of the Provincial Secretary and Citizenship. Is there anything to be added to that that would be interesting to us?

MR. ANDERSON: I think it might better be expressed that I, as co-chairman for Ontario, report to Mr. Welch as the minister responsible for carrying this ball in the Cabinet. So it would be better to put it that way than to say that it is one of his departmental responsibilities. It is not. I think it would be better to say that it is one of his ministerial responsibilities outside the parish of his department.

PROFESSOR FOX: I see.

PROFESSOR ANDERSON: However, I quickly

qualify that to say that my travelling expenses and the actual administrative expenses of the Commission we get from the Department of Provincial Secretary and Citizenship.

There is another implication perhaps inherent in your question. It is not terribly clear where the primary responsibility for cultural affairs lies in Queen's Park. I am very clear that it does not lie with me, but there has got to be a parent department for every subject with which the Permanent Commission deals. I have already asked the question in Queen's Park as to who it is that has responsibility for the Queen's Park interest in cultural affairs. This is a bit diffused at the moment. The Department of Education has quite a strong stake in the game, if for no other reason (there are other reasons) than the Council of the Arts which is sponsored by that Department, but other departments have a stake. The Department of Citizenship which is now growing to be regarded as the department interested in the good Ontario life for all citizens, has a stake in this. This is ill-defined, but the fact that my Commission reports to Mr. Welch I do not think need carry any influence beyond the simple fact that some minister had to be and the Provincial Secretary seemed to be the right one.

PROFESSOR MEISEL: As a footnote, which

is probably outside of our terms of reference in this, but I think there ought to be some thought given perhaps, particularly in view of what John Conway has said, to moving towards a minister who would be responsible for all these things and would become a spokesman for them in the Cabinet. I think it is related to the identity of Ontario as distinct, say, from New York State.

MR. ANDERSON: Certainly if you are the co-chairman of a permanent commission and you are looking for the people who are operating in Queen's Park in this area, you would have to agree that a little more centralization would be neater.

THE CHAIRMAN: There is a related matter which is of interest in a recent event, and that is the Federal Advisory Board, I believe it is called, on bilingual districts. I believe our colleague Paul Fox has been appointed and perhaps, Paul, you might like to report briefly on that board, and, in particular, how it might relate to our side of things as discussed.

PROFESSOR FOX: Mr. Chairman, this board is appointed under the Official Languages Act, and it has had only one meeting thus far. I am not too sure that I should go into many of the aspects of this, other than to suggest that it is at work and will be in touch with provincial people about what it is doing.

Perhaps if you would like to direct

questions to me, that might be the easier way of answering some of these things.

THE CHAIRMAN: May I direct one. What is its expressed purpose?

PROFESSOR FOX: Its purpose is to set up bilingual districts for the federal government as outlined in the Official Languages Act. If you want to look at the Official Languages Act, I can give you a copy. The Act sets down very clearly what the board is to do, and it is to set up these federal districts but, the Act interestingly emphasizes, in consultation with the provincial governments. So the notion is, in fact the board is obliged, to consult with the provincial governments before these districts are proclaimed. So the board will pursue a cooperative approach to the establishment of districts, with full recognition of provincial interests in these fields.

I guess I could say privately that I pointed out the concern of provinces in the implications for provinces in the establishment of these districts, and that it would be very unwise to proceed without exploring all the ramifications for provincial costs, for instance, in establishing districts that might create certain difficulties for provinces if these problems were not thought out in advance.

So I think you will find that the board

is extremely anxious to work in conjunction with the provinces in establishing their districts. They can establish districts, of course, under the Act only for federal purposes, but I reiterate that the Act does say that these must be established only after consultation with the provinces.

The understanding between the lines there is that they would attempt to secure as much cooperation as possible between the two sets of governments.

THE CHAIRMAN: What is the relationship, if any, between that board and the Official Languages Commissioner or ombudsman?

PROFESSOR FOX: A lot of people have misunderstood this, I gather from what was said at the first meeting. They have believed that somehow the board was related to the Official Languages Commissioner. Several people mentioned that Spicer was our boss. That is not true as far as the Act is concerned at all. These are two quite separate operations. The board is a sort of work board comparable, I suppose, to a redistribution commission within a province which redraws electoral boundaries. Indeed, that is the comparison that is drawn in the Official Languages Act. Therefore, it is a sort of technical board.

The Commissioner of Languages is much more of an ombudsman, who has to oversee the implementation of the Official Languages Act, of

which the board is only one small part. So there is no relationship necessarily between these two institutions.

MR. GREATHED: Mr. Chairman, I wonder if Paul could say whether the members of the board view themselves as cartographers or sociologists or political scientists? You are going to have to draw some pretty fine lines.

PROFESSOR FOX: I think the feeling was, after looking at some of the problems, that we would have to be magicians. No, I suppose I might mention the President of the Board - would that be of interest?

THE CHAIRMAN: The kind of people.

PROFESSOR FOX: All right, I will mention them with their locale and their occupation.

The Chairman is Mr. Roger Duhamel, the one-time Queen's Printer of Canada and served before that as vice-chairman of the B.B.G. He is a civil servant on loan, technically, as I understand it, from the Department of External Affairs, where he has been since leaving the post of Queen's Printer. He is full-time, of course, and has a very small staff of half a dozen secretaries, typists and so on. Incidentally, Neil Morrison has been appointed secretary of the Bilingual District Board.

PROFESSOR BRADY: Is this an official position under the Civil Service?

PROFESSOR FOX: Which, the chairmanship and the secretary?

PROFESSOR BRADY: The chairmanship.

PROFESSOR FOX: Yes. Incidentally, I suppose I might mention the board has very

extensive powers. It is set up with the full power of a commission under the Inquiries Act, so that it has considerable power to hold hearings, call witnesses, secure assistance from government departments, etc.

The membership of the board -- the Act requires a board of ten people distributed with due recognition of region, etc. The way it came out -- and I will just think of the people around the table so that I can pick them off -- from the Maritimes there is Harry Smith, who is a professor of French at the Nova Scotia Teachers' College in Truro; Dr. Savoie, who is the Rector of Moncton University. I do not know what his discipline is. Does anyone know?

THE CHAIRMAN: You mean you do not know what "Savoie faire". (Laughter)

PROFESSOR FOX: Quebec -- Murray Valentine, who is a resident of Montreal and an historian, although I am not familiar with his work, I must say, with all due deference. I do not believe he teaches in the university, does he?

PROFESSOR MEISEL: Wasn't he at Loyala for a while?

PROFESSOR FOX: I do not know. He may have been. He was not given any identification and this is why I put it this way.

Mademoiselle Joubert, who is head of the French-Speaking Adult Education Association

located in Montreal.

In Ontario, Roger St. Denis, who is a geologist and Vice-Dean of the Faculty of Arts at the University of Ottawa.

MR. GREATHED: But not the St. Denis of the St. Denis report.

PROFESSOR FOX: No, thanks, Ed. I gather there are two Roger St. Denis, and this is the Vice-Dean of the Arts Faculty in Ottawa. I guess that completes the Ontario delegation, with myself.

Then there is Judge Monnin of Manitoba who is a member of the judiciary, though I do not know what court in Manitoba. There is a Mrs. McEven from Saskatoon who is, I believe, a professor of chemistry at the University of Saskatchewan, but who has had some interest in establishing a private French school in Saskatoon.

Then from the West Coast and the University of Victoria, Professor Harry Hickman, who is the head of the French department at the University of Victoria.

I have not left anybody out, so that completes the membership of the board.

THE CHAIRMAN: Thank you very much, Paul. The answer is then there is no geographer so far as I know, unless some of these people ---

PROFESSOR LEDERMAN: You have a geologist and a printer, though.

THE CHAIRMAN: We shall be interested in this as it goes along. Bill, thank you too for your contribution. As I say, you are welcome to stay as long as you can.

Perhaps we can go on to Item 4. Some of you will recall that the very famous book, Alfred Marshall's "Principles of Economics" was called Volume 1, but there is never a Volume 2, though we are hopeful. We won't fall into that tradition here. Ed, you can tell us about the progress of Volume 2.

MR. GREATHED: I shall emulate your example, Mr. Chairman, on Item 1 and report very briefly indeed to the members, simply to say, first, that the basic editing of the manuscripts is now almost complete and proofs will be out next month some time, I suspect. We are having to advance, as one always has to advance one's publication date, but it looks now like some time in May or June -- providing the type-setters do not go on strike as they are threatening to do in the next six to eight weeks. As I was saying to the Chairman last night, it really does not matter whether they go on strike before or in the middle of it: the volume will be locked up and not out if they do go out on strike. However, let us hope that does not happen.

I might say finally that as of April 1st we formally have a new Queen's Printer and

Publisher, a completely new operation in Ontario, with the establishment of a bookstore and so on planned in the next month or so. Therefore we can look forward to much better and, indeed, much more sophisticated distribution facilities than we have had before. I am sure that this book will be one of the first items that this office will handle.

PROFESSOR CREIGHTON: Where is the bookstore to be established?

MR. GREATHED: I think it is at Bay and Wellesley, isn't it?

MRS. WILENSKY: Bay and Grosvenor, in the building at 880 Bay.

PROFESSOR CREIGHTON: This is not yet?

MR. GREATHED: I understand it is in the next month.

MRS. WILENSKY: They are now in the basement of the Whitney block.

MR. GREATHED: Yes, they are refurbishing that building on the corner, and as soon as they finish it ---

PROFESSOR CREIGHTON: This seems to be long overdue.

MR. STEVENSON: Yes.

THE CHAIRMAN: There was a fire over there this morning, so the refurbishing may be a little closer to completion than it was.

PROFESSOR FOX: They have decided to

burn the books in advance. (Laughter)

THE CHAIRMAN: I am very hopeful that we could get this book out in May or June, because it is always preferable, if possible, if it can be released at the time that the Prime Minister tables it in the Legislature and make the announcement there when it is released. That would meet that objective. Also we could catch the summer vacation reading list, of course, for popular consumption.

PROFESSOR McIVOR: How large a press do we contemplate?

THE CHAIRMAN: This is a good point.

MR. GREATHED: At this time we are contemplating a run of approximately 3,000 copies.

PROFESSOR McIVOR: On the first one ---

MR. GREATHED: The first one was considerably higher. I hesitate to go too far here, but it was in the realm of nine or ten thousand copies, of which we have a few still available.

--- (Laughter)

Members are very encouraged, as I wrote to them, to take as many copies as they can possibly carry.

THE CHAIRMAN: Maybe you are the culprit in all of this, it suddenly occurs to me, because not only have we got a very great stock of Volume 1 of the O.A.C.C. reports, but a very great stock of the Smith Report, of which you too were a member.

PROFESSOR CONWAY: Mr. Chairman, it seems to me that the circulation of both of these volumes is very desirable, and I am so glad to hear that someone else is taking on the job. When you look at the papers and see how books are advertised, there is a technique to this. We are dealing with national problems, and there should be a professional to get this ahead.

I do not remember seeing that volume mentioned anywhere in the Toronto press, let alone the press outside, and I just do not think that is good. I think there are a lot of very thoughtful citizens who are interested in the problems of this country, and if the volumes were drawn to their attention they would buy them. When you think of all the trash that is sold by reason of very expert publicity and advertising, I think at least we should have some modicum of publicity for these things.

THE CHAIRMAN: Perhaps you had better review your plans for the cover. (Laughter)

John, this is a good point, and we might try to steer some advertising on the basis of the companionship of these two volumes as well.

PROFESSOR CONWAY: I wonder, for example, of my many literate and well-educated friends in British Columbia, how many have even heard of that first volume or know that it is in existence. I think I could name just half a dozen people I

know in Vancouver right off who would be interested in that.

MR. GREATHED: Give me their names, John, and I will be very happy to send them a copy.

PROFESSOR CONWAY: Okay, I will.

PROFESSOR BRADY: I might mention that a friend of mine, Mr. Chairman, wrote to the Queen's Printer of Ontario on hearing about this volume and never got a reply as to how one got a copy of this book.

PROFESSOR CREIGHTON: This is the point; you never knew where to write about an Ontario publication.

THE CHAIRMAN: That is quite true.

PROFESSOR CREIGHTON: You did not have any idea where to get it.

THE CHAIRMAN: I hope all this new procedure will do the trick, particularly as it will be highlighted by the physical existence of the bookstore.

Can we go on to Item 5, which is described as: "Discussion of the Establishment of Legislative Committees on the Constitution by Canada and Ontario". Now, the federal committee has been established?

MR. GREATHED: That is correct.

THE CHAIRMAN: And the Ontario committee has yet to be established, and we have not had further advice or indication from the Prime

Minister about timing. I would presume that that committee would be set up as soon as the House returns on March 31st. The session so far has been very brief this winter.

I do not know if there is really much else we had to say on this. I think we put it on the agenda mainly in case members of the Committee had any questions about the function of the two committees or their possible participation. I know, for example, that Dr. Forsey has indicated to me he intends to make a submission to the federal committee that is sitting.

MR. GREATHED: It was the establishment of the Joint Parliamentary Committee that precipitated the January 26th-27th debate which Professor Lederman referred to, copies of which are going out to members. I concur completely with what Professor Lederman said, that it was really quite a fascinating debate, uneven certainly, but nevertheless really a very interesting exposé with views from many, many different members of Parliament on the current preoccupation with the constitutional review. Then our Committee was simply mentioned without any further embellishment in the Throne speech. It was, incidentally, described as a Standing Committee.

THE CHAIRMAN: Ray, have you heard any further suggestions about timing?

MR. FARRELL: I am pretty sure it was not

in the list of Standing Committees.

THE CHAIRMAN: No, it was not.

MR. FARRELL: That are set up at the beginning of the House session.

THE CHAIRMAN: I imagine there is some discussion going on between the party House leaders on the nature of the committee.

PROFESSOR FOX: Mr. Chairman, may I ask if it is clear to us what our position is in being invited to appear before one of these committees? Am I correct in my recollection that what we decided previously was that it was entirely up to a member of this Committee to appear as a private individual if he so desired.

THE CHAIRMAN: Yes.

PROFESSOR FOX: Invited to appear before either a federal or a provincial committee.

THE CHAIRMAN: Well, to separate these, first of all I think as far as a federal committee is concerned it is a little easier, because there there should be no doubt in my view (and this is the opinion I expressed to Dr. Forsey when he wrote me about it) that any member of this Committee retains his private capacity and would make the decision on his own private basis whether he wished to appear before the federal committee or not. I see no complication there whatsoever.

As far as the Ontario committee is

concerned, I believe that in his private capacity any member of this Committee would be entitled to decide whether he wished to press himself on that committee or to answer an invitation to appear before it as an individual.

That leaves the final situation which conceivably could arise, of the Legislative Committee requesting this whole Committee to appear before it. In that case, I think since this Committee in a collective sense was appointed as an advisory committee to the Prime Minister, I would presume that the request would probably have to go from the Legislative Committee to the Prime Minister, if there were a request for this Committee in a collective sense to appear. It would then be up to the Prime Minister, I would think, either to ask this Committee if it would be willing to do it, or perhaps to decide that, no, the Committee qua committee was there as a committee advising him, but this did not inhibit any individual from being invited to express his opinion in appearing as a private citizen.

That is my own thinking, as far as it has gone, on anticipating the kind of question which might arise in this context. I would appreciate any advice that you might have in anticipating the question.

PROFESSOR CREIGHTON: Is there any real chance that either individually or collectively we

will be invited?

MR. GREATHED: I think it is safe to assume, Mr. Chairman, that because of the long history of this Committee and because of the expertise in it, and because of the publications of Volumes 1 and 2, that the members will be asked -- either, as the Chairman suggested, in their private capacity, or as a group, to appear.

PROFESSOR LEDERMAN: I think it has always been clear, at least it has always been my understanding, that Mr. Robarts' position was that each of us was free to take public positions as he saw fit.

THE CHAIRMAN: Yes.

PROFESSOR LEDERMAN: Taking responsibility for it himself.

THE CHAIRMAN: Right.

PROFESSOR LEDERMAN: Making it clear that he was not speaking for the Government of Ontario or for the Committee as such.

I presume that if the Ontario Legislative Committee wants to hear from us, it is a question of a series of individuals appearing and taking individual responsibility for certain views. There may be some expectation in the Ontario Legislature that this Committee could speak with one clear voice, but someone will have to disabuse them of that.

THE CHAIRMAN: We can disabuse them of

that very quickly.

MR. GREATHED: I think they will see that in the volumes.

PROFESSOR LEDERMAN: We are not that kind of Committee, and it was never intended that we should be.

THE CHAIRMAN: No.

PROFESSOR LEDERMAN: We were invited to keep aflow of diverse ideas going through to the ministers responsible, and I think we have kept up both the flow and diversity.

PROFESSOR CREIGHTON: I can think of a number of people in the Committee, Mr. Chairman, whose advice on this matter will no doubt be sought by it, and I can think of others (including myself) who certainly will not be invited at all; but if there is a general invitation or an invitation to a number of people, is it a royal command or can one simply refuse?

THE CHAIRMAN: Again, I am not very expert in this area. What is the status of a Standing Committee of the House, Ray, vis-a-vis asking for citizens ---

MR. FARRELL: I do not really recall anybody being summoned.

THE CHAIRMAN: I don't think they could.

MR. FARRELL: These people are anxious to get before it, and people are only too happy to appear.

MR. STEVENSON: What happened, Ray, with the Director of the Brockville Mental Hospital last year?

THE CHAIRMAN: He was a civil servant, wasn't he?

MR. GREATHED: No comparison.

MR. FARRELL: I think he really appeared voluntarily. They asked him to come and he came. For a while I think there was some talk of what they would do if he did not come, but I think it ended up that he did come on his own.

MR. ANDERSON: I think I can answer the question at the federal level, Mr. Chairman. I really would not know whether constitutionally the same principle would apply provincially. At the federal level a lot of us during the unification of the armed forces had to know the answer to this question: If they command your presence, is it a command performance? The answer is "yes" at the federal level it is; and if the federal committee says they want you to appear, you are obliged to appear. As an aside to that, your minister, however, if you are an official, can tell you what you may or may not say. That is another question.

THE CHAIRMAN: You would be asked to be there as a member of the armed forces, though.

MR. ANDERSON: I think I am answering the question in general.'

THE CHAIRMAN: I see.

PROFESSOR CREIGHTON: Any citizens.

MR. ANDERSON: That we were advised that any citizen they asked for, had a constitutional obligation, a legal obligation, I guess, to attend.

PROFESSOR FOX: That is correct.

Mr. Chairman, I am not familiar with the provincial scene, though I should think it would be the same; but the terms of reference which are given to most committees when they are set up by the House of Commons, is that they are given power to summon witnesses, call for papers, etc., and therefore anyone can be obliged to go forward.

MR. STEVENSON: Mr. Chairman, we can confirm this over the lunch hour.

THE CHAIRMAN: We will, but is there an equivalent of the Fifth Amendment here?

PROFESSOR FOX: Well, you do not have to talk, but you have to appear, I guess.

MR. GREATHED: Part of the silent majority!

THE CHAIRMAN: I am just very interested, in these days of civil rights, by what right a group of elected people would be able to summon an individual.

PROFESSOR FOX: This has been, as far as I am aware, the traditional power of Parliament.

PROFESSOR CREIGHTON: It is the traditional power of Parliament.

PROFESSOR FOX: To require the appearance of people before it.

THE CHAIRMAN: I would think it was a very bad practice myself.

PROFESSOR MEISEL: Surely the powers are merely to summon individuals. I cannot recall a single instance where a federal or provincial legislative committee invited another committee to present itself. I think they can ask for Mr. Jones and Mr. Smith to come, but they do not have the power to summon committees as committees.

PROFESSOR LEDERMAN: I would not think so.

THE CHAIRMAN: I think the committee thing is a different question, but we will find out what the practice is in Ontario. Again, one cannot anticipate what the likelihood is, although I would be surprised if they do not issue invitations to certain members of the Committee on certain subjects to appear. How one conducts oneself then and whether one acquires chronic laryngitis or in fact wishes to speak freely, I do not know. Presumably that is up to the individual.

MR. FARRELL: At the time of the Brockville matter last year, Mr. Chairman, I do not think anybody was too certain of how they would summon somebody who did not want to appear, but I think the idea was that they would have to go to the Speaker. As somebody pointed out, one of the powers of the Legislature is to summon somebody if they want, and

I think that is what they decided would have to be done. They might have clarified it more since then.

THE CHAIRMAN: It was certainly confusing.

MR. FARRELL: It is usually a problem of trying to keep people away when some matter is coming up. Everybody wants to appear before the Standing Committee and air their views, and we usually do not have much of a problem.

THE CHAIRMAN: We will advise you further on this one. Are there any other questions on Item 5?

Item 6, in many respects, I believe we strayed into this item and had considerable discussion on it already, although I think I perhaps closed off the discussion at a stage when Paul Fox might have had a contribution he wished to make.

PROFESSOR FOX: I do not know, Mr. Chairman, whether you want to spend very long on it. I think many of the points that were made this morning were the ones we would discuss if we were to go on very far. Do you want to?

THE CHAIRMAN: Not unless there is any feeling otherwise. My own feeling was we really had a thorough discussion and it was probably as far as we could go.

PROFESSOR FOX: If I may sum up my contribution by saying that I would range myself on the side of Bill Lederman and Ed Greathed in

what was said; that is, I am more optimistic than you yourself seem to be, and that I think the period we are in is still a period of education. I was struck by this when I spent the summer last year in Victoria, for instance, that there is a danger that we see national problems only from our own experience; and because we have been working on this problem for some years we think that everyone else in the country has reached the same stage of advancement or progress in their thinking and knowledge etc., that we have, and this is just not true. It is still news to a lot of people in Canada.

The fact that two legislative bodies have established committees which I think are going to be interested in exploring many of these questions, is an indication of how far some areas, even within Ontario, for example, have lagged behind. There has not been a forum for the discussion of these matters in the Legislatures in Ontario or Ottawa; and you may suddenly find a renewed interest in these legislative bodies, and also in the press taking up the debates there, in the general subject.

So I really want to point out that there is a discrepancy amongst areas within areas, and that, secondly, I think we should be more encouraged than you seem to feel we should be by events to date.

MR. STEVENSON: Mr. Chairman, I might

add one point too, that is that I was very surprised that in the earlier discussions the word "Quebec" was not mentioned once; and it is quite obvious, I think, that the Confederation of Tomorrow Conference and a good deal of the whole discussion about constitutional change has been not exclusively but certainly largely occasioned as a result of problems in Quebec, discussions there, and the whole question of Quebec's relations with the rest of the country.

This is not something, of course, that is going to go away. To quite an extent, of course, it has become in Quebec an internal issue.

One of the reasons for the Confederation of Tomorrow Conference, in addition to the ones you cited, was, of course, an attempt to provide an outlet for the great debate that was going on within Quebec that had not been joined elsewhere at all. Obviously since then, as Paul Fox said, it has been a gradual up and down movement of the awakening of general interest in the discussion of the goals and specifics in the rest of the country. I can certainly see the impetus from Quebec at perhaps any time in the next two or three years arousing a kind of very specific interest across the rest of the country in creating the urgency that probably was felt two or three years ago and which is not perhaps felt now.

PROFESSOR CONWAY: Is there a committee

such as ours in any other province?

MR. STEVENSON: No.

THE CHAIRMAN: Alberta has established some group of advisers.

MR. GREATHED: They have sought some assistance from people in the universities, but it has been of a very informal and ad hoc character.

I think members of this Committee will recall that at least a year ago Tom Symons reported to us that he had had some feelers put out by someone in the Government of Alberta that they were considering a committee of this kind, but I do not think it came to anything more than that. Alberta certainly has not set up anything as formal as this Committee, nor any outside group that meets nearly as regularly.

MR. STEVENSON: Similarly in Nova Scotia, but an informal group.

MR. GREATHED: Even more informal than Alberta.

PROFESSOR CONWAY: How many copies of Volume 1 went out to the western provinces? Is there any policy about sending it to legislatures?

MR. GREATHED: I could not answer that question. The policy that we followed was that we distributed copies to libraries across Canada. I do not know that copies were distributed to the legislatures.

MR. POSEN: The Premiers got them, and

the delegates that came to the Confederation of Tomorrow Conference received copies.

THE CHAIRMAN: Perhaps we might consider sending the two copies to each legislature in Canada.

PROFESSOR CONWAY: I think that is a very good idea.

PROFESSOR FOX: May I put in one thing for information? Mentioning Alberta reminds me, as an indication of the continuing interest or the degree to which some parts of the country are getting interested in the question, that the University of Lethbridge is having a symposium in May on the topic of, I think, "United Canada?".

MR. GREATHED: "One Prairie Province".

PROFESSOR FOX: Prairie union, but also there is some suggestion this will involve discussion of constitutional matters, and this is another indication of the degree to which this has been gone into.

PROFESSOR CONWAY: When is this being held?

PROFESSOR FOX: May, is it not?

MR. GREATHED: May 10th to 13th.

PROFESSOR CREIGHTON: What is the subject of the conference?

THE CHAIRMAN: "One Prairie Province".

MR. GREATHED: "A Question for Canada".

THE CHAIRMAN: Paul, just to clarify

one point about my own position, I think there are really two sides to it. I do not regard the future of the constitutional review pessimistically; indeed, I think it will go on and will continue to make progress. The only distinction I was making was that I did not feel it would perhaps be as dominant at the centre stage as it had been.

You raised the point about the legislative committees and so on which may bring it back there, but I certainly do not feel either pessimistic or discouraged about the work, quite the contrary. I think the work is moving on in a very strong way as far as the support is concerned.

That may well be, I think, a good lead into Item 7, which was to have a brief discussion on optional approaches to the constitutional review process. One should always consider from time to time, if there are difficulties about the process, whether it is the objective that is at fault or the process and means of reaching it. From time to time, the first ministers have raised questions about whether we were going at the thing the right way, and this came up again during the last conferences this winter.

Briefly, the method so far has been, as you know, that first of all each province was invited to submit a number of propositions on the general theme of confederation and on particular areas within it. Our government, for example,

submitted, I guess, about fifty.

MR. GREATHED: Forty.

THE CHAIRMAN: Forty or so propositions which were discussed in this Committee and approved by the government to go forward through the Continuing Committee of Officials.

The other aspect has been the preparation of position papers by the different governments. These have tended to be put into the officials' discussion, having the imprint of government support behind them, so that they have tended to lead to a kind of confrontation there.

We have argued, from the beginning, that the preferable approach would be for officials to come and contribute towards the collective establishment of all the issues that are involved in any area, the pros and cons of different options, advantages and disadvantages of different approaches, and so on -- trying to get all the raw material assembled; then to use that for the process of mutual education, take it back, discuss it with your own ministers, and perhaps lead everyone in the direction of some kind of a consensus.

Up to now the committees have tended to be confrontations where one is presented with one set of views and is invited to react to them and so on. In our view, this has tended to have not only a delaying effect on the real progress, but also had the unfortunate by-product of introducing

more tension into the air than is sometimes necessary.

On Monday and Tuesday one of the items in the Continuing Committee of Officials agenda is the approach, and this is because at the last constitutional review several of the prime ministers suggested that we should be looking very carefully at whether we were going at the thing in the right way.

We have not much more to offer from the position we had been taking all along, and I am not sure what the outcome of the meetings on Monday and Tuesday will be; but I put this on the agenda because I thought that those of you in this Committee who have been observing these activities one step removed, might possibly have some view on the methodology, on the question of whether the methodology is hurting or hindering the pursuit of objectives.

PROFESSOR BRADY: Mr. Chairman, aside from the conferences of the Continuing Committee of Officials, you have these ministerial committees which include civil servants and ministers, I gather. I thought that that was a very good device, probably the best device actually.

We in this Advisory Committee do not know very much about what they have done, and I would like to ask how the work of these committees appear to you and the secretariat here.

I think one desirable thing is to get ministers in different governments involved, not merely prime ministers; because it would be difficult to make progress in a constitutional review or constitutional change without having many individuals in governments interested in doing something or seeing something done. The ministerial committee, it seems to me, would contribute to that end. I assume these ministerial committees are continuing and working reasonably well. Are they? Would you like to explain to us.

THE CHAIRMAN: Again, I would refer this to Mr. Stevenson and Mr. Greathed, except to point out that some of these committees had indeed got into some very hard and firm examination of subjects. For example, on Item 8, which is the central and substantive item of our agenda today, the proposals on the judicial structure of Canada and proposals on the Senate: this, I believe, Ed, is the work in fact related to those particular ministerial committees, which is becoming very firm and very hard stuff in the input. Do you want to add anything there, Ed.

MR. GREATHED: I just make one preliminary observation, Mr. Chairman. I think in this whole discussion of the way we are going about the constitutional review, there are really two separate questions. The one that I think was

concerning the prime ministers most was just the physical frequency of meetings, the difficulties of getting together, and whether there was not in fact some more convenient way and better mechanical way of conducting this process, without physically forcing prime ministers or premiers from all across the country to come together and discuss these various matters.

I think that at one point in the February 1969 conference, Premier Campbell made the suggestion: "Why not closed circuit T.V.? We could all sit in our offices and talk about this". There have been various suggestions along this line, so we are looking at this aspect of it.

The other aspect and the other problem is, of course, the whole question of how you go about the constitutional review, and what is the best way to facilitate progress within the review. I think it is safe to say that basically two major approaches have emerged. One has been the approach of the Government of Canada which has said that it is most necessary, particularly in the distribution of powers, to analyse each power, power by power, to have an extensive analysis of the individual problems associated with that power, and come up with some recommendations. They have done this now in three areas, in the spending power, taxing powers and income security and social services; and on each occasion, of course, they have produced

one of their red, black and white booklets as the result of this research and analysis. This is one way of doing it, there is no question about it.

The other way -- and I think it is safe to say it is the way that has been proposed by the Government of Quebec -- has been, in a sense, to lay out all your cards on the table (rather like the Quebec working document of July 1968) and give them a map of your general feelings and preferences and so on about this whole question. Then you can get down to the details of the areas of agreement and disagreement. In this way, as Quebec argues, the areas of disagreement and agreement become much clearer.

This is where I think we stand now in this particular debate, Mr. Chairman. I think it is now preoccupying and concerning those of us at the officials' level and also at the ministerial level, just which approach we should use, or whether there is indeed another approach. This is really why we would like to get the feelings and opinions of the members today, I think, which would facilitate the progress of the review.

Quite clearly, I think, the approach of analysing distribution of powers, power by power, is a very long one and one of which we shall not see the end for a goodly time, particularly as we get into perhaps more difficult subjects than we have already explored.

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There may be some merit, some advantage -- I think the Committee's opinion here would be helpful -- to the Quebec suggestion that you do lay out a map of your intentions, your preferences and so on, and once everybody has done that then you see where the real areas of disagreement lie.

In rather specific answer to what Dr. Brady has said and Mr. Chairman has mentioned, I think that papers which are produced here, the work which is going on here, is a direct consequence of the very active sequence of meetings at the official level, at ministerial level, at the prime ministerial level. Every time I listen to comments about the constitutional review process slowing up, that is certainly not the impression that my family or, indeed, the families of any civil servants around this table, have in the last year or so. I think the activity is considerable and it is, as the Chairman has indicated, getting much tougher because we are talking about very specific issues. So that anything that we have put forward for your consideration and so on, is almost inevitably a direct consequence of some ongoing activity in the constitutional review.

PROFESSOR FOX: Mr. Chairman, I think that Professor Don Smiley suggested an alternative in a paper that he delivered at a conference in Niagara Falls in the fall. I was not present at that meeting, and I did not have the opportunity to

read the paper. I do not know whether anybody here was and whether it is useful or not, but if it is desirable maybe somebody could make comments on that. Were you present, Dr. Brady?

DR. BRADY: Yes, I actually was. I was not quite clear as to what Don Smiley was recommending as an alternative effective way of proceeding. I have not seen the paper since it was delivered there, so that I would not like to comment on the argument at this juncture off the cuff.

PROFESSOR MEISEL: It seems to me that the process is going on at several levels, and that what one really sees is that there are political solutions being sought with the first ministers' meeting and the other ministers. There are all sorts of efforts being made at the level of officials, and there is a certain amount being done in terms of public opinion being educated and forming on some of these issues.

I think the only thing one can really do is to say that we are not doing enough, say, at the public opinion level, or not enough at the level of the politicians, or too much so, and we should be putting emphasis somewhere else.

I certainly do not feel competent to make judgment on this. I think it might well be useful if some of the people who had been very closely connected with this would sit down for an

hour and perhaps write out a kind of assessment of these various levels, and see whether maybe unwittingly one has drifted too much into one direction and is neglecting certain other things, or one is wasting time by putting too much effort into, say, officials pursuing certain things.

My outside impression is that the thing is going better than I would have thought possible, and that if there is not a colossal amount of waste we should pat ourselves on the back and say that we are really doing much better than we have any right to expect, and that it is going to be a very long time.

MR. GREATHED: I think, John, in commenting on what you have said, naturally those of us involved in this probably excessively dwell on the subject all the time, because you are very concerned about the process and to make sure that progress is being made, and that the governments indeed are satisfied with what is going on.

I think that the establishment of these legislative committees, particularly the Joint Parliamentary Committee, is an indication that certainly in the mind of the Prime Minister of Canada (which he expressed on January 26th in the House) that he did want to widen the debate, he did want to take it out a little more, as Paul Fox was saying earlier on, and that he did want more parts of the country to be more actively involved.

That committee very specifically, despite George Bains humorous imagery about it, is going to be travelling across this country and, I think, much in the way of the B & B Commission intends to hold public hearings and to invite people to make comments on this whole activity that really at a governmental level has been very intensely going on for the last two and a half years.

THE CHAIRMAN: I must say I agree that there really has been a tremendous amount of basic work done. Sometimes I think we lose sight of a couple of things. First of all, it took nine years from the word "go" to put a man on the moon, and that was a considerable technical achievement but it was a single-minded achievement. We are talking here about a very complex human and political kind of thing.

Also, I think we should remember that there is a relatively small body of people who are engaged in a number of things at once. We have a great many national debates going on -- the debate on taxation, the White Paper on tax reform, debates on Canada's role in other things. Everything is really up in the air, and an awful lot is going on in the country at this time of a fundamental nature.

When one looks back over the period between February 1968 and the present time, which is just over two years, I think that an awful lot

of the people who are involved in this process and will be involved in the decision-making, have come a very long way in coming to grips with the issues and the mechanics. As you say, with the Parliamentary Committee going about, this should broaden even further.

We are trying to analyse this. After the last meeting we were asked by the Prime Minister to prepare some assessment for him on the whole review process, and perhaps to discuss some options, and we would appreciate any advice that members of the Committee may have to offer on this. We shall be working on it ourselves, and we may have some more ideas after the first of the week when we see how discussions go at our meeting of officials on Monday and Tuesday.

PROFESSOR FOX: May I just put in one illustration that comes to mind now that you are talking. I was struck, in watching the federal-provincial conference in December 1969, by the fact that some members of the various governmental delegations were so much more advanced in their thinking than others. It was perfectly apparent that some who had been lagging behind in the initial phases, some of the western provinces -- Saskatchewan, Alberta -- had advanced considerably and were now discussing problems at a much more educated or informed level. I was struck by this because when the Manitoba people came forward

to present their views, apart from the Premier who, I thought, had a reasonable grasp although he missed a couple of times on very fundamental things; the ministers who spoke, I thought, were not nearly so well equipped, and they obviously had not been brought to that level of advancement.

I take this as an illustration of the problem we are talking about, that new people keep coming into the process, new events keep intruding into the process, new emphases arise with regard to taxation, tax structure committees and so on, so that you cannot expect too much. You cannot assume that there is one class of students gradually learning more and more and going on, because the personnel and the problems keep changing. I thought that was dramatically illustrated at Ottawa. I do not know whether others noticed.

PROFESSOR MEISEL: At another level altogether, I read coming up in the train this morning the two papers on the Court and the Senate; and I was struck, as I was reading these, with how far we had gone from terribly vague expressions of philosophical concern to papers which I thought in some instances had really original solutions to some very difficult problems. There is a sort of disarming simplicity about these papers which I think you only get if you have sweated through years of putting up proposals, having them shot down and finding what seems to be very kind of

medium-range solutions but solutions which may very well be acceptable to the other people who are involved in the process. I think the fact that we have been able to concretize some of these thoughts to this degree is, at the other level, an enormous success. I do not know how anybody who knows something about politics, as all of the prime ministers obviously do, can expect anything much better.

THE CHAIRMAN: John, the rate of change and, as Paul says, the change of personnel, is very important here, particularly where the provinces are concerned. To give you an illustration of something that is quite dramatic, at the last federal-provincial conference, the discussion was on the Canada Water Act, and because of the long history of our Water Resources Commission here and the very active work at the moment in pollution and so on, a good deal of analysis had been done on the implications of that Act; and our minister responsible pointed out the extent to which this very quickly led into water management, very quickly led into problems of resource management, very quickly could affect the location of industry, and local decisions on a whole host of things. Up to that point, there had been a fairly general acquiescence around the table, and suddenly it was terribly interesting to watch as the premier of Nova Scotia suddenly said: "Do

you mean this could really in effect take us right back into the interior of Nova Scotia?", and the premier of Manitoba said: "You mean this could affect the whole location of hydro developments in Northern Manitoba?". Suddenly people kept springing up almost as if someone had pushed the button and they had come to life on this issue, and the whole nature of the discussion changed very quickly. So this is a function of the change in people and the rate of change and, again, it is not, I do not think, a discouraging thing at all.

Perhaps that brings us to Item 8. We have circulated the first two earlier and the last, depending on the vagaries of the mail service or your own movements more recently, and we did want to get down to some examination of these questions.

Ed, these have been out at some stage earlier, because we have received some comments back, have we not?

MR. GREATHED: Yes, we have received some, Mr. Chairman. I might say, has everyone got copies?

PROFESSOR CONWAY: I haven't got the third.

MR. GREATHED: The third was mailed out on March 18th, I believe, just on Wednesday, that is the analysis of the Burns' report.

PROFESSOR LEDERMAN: I do not have the third one either. Thank you.

MR. GREATHED: If our relatively local

members just got it, then I am afraid ---

PROFESSOR MEISEL: Well, the metropolis got it.

MR. GREATHED: Ted McWhinney told me he had not got any of them yesterday, but that is understandable.

THE CHAIRMAN: The first is "The Judicial Structure of Canada".

MR. GREATHED: I might just say about this, Mr. Chairman, on this particular paper on the judicial structure of Canada, as I mentioned to the members in my note of March 13th, members did look at a much earlier draft of this paper and in the subsequent period what has happened has been that the ministerial representatives from the eleven governments of Canada have met on two occasions, last May and last November, and are likely to meet again in the spring to discuss this question. Therefore this paper in some of its contents reflects that discussion. It also reflects a fair bit of internal discussion that we have had within the Government of Ontario.

I think we would now like to feel that we are close to the point -- and I think two ministers, that is the Minister of Justice, Mr. Wishart, and the Minister of Mines, Mr. Lawrence, who are Ontario's two representatives on the Committee of Ministers on the judiciary -- I think they too would like to feel that this paper is fairly close

to being formally submitted into the constitutional review process. When I say "fairly close", I am not trying to anticipate any contents of the discussion this afternoon; indeed, we welcome any comments you have on this particular paper. I just thought it might be helpful if I described the background of this.

THE CHAIRMAN: What is the timing of that? Is that committee scheduled to meet again soon? They were seeking something by a certain date.

MR. GREATHED: That is correct. The Secretariat of the Constitutional Conference has really been after us for some time now, as the result of the conclusions of the November meeting of the Committee of Ministers in which they said: "We have had a general discussion of the issues. In the interim each of the governments will submit its ideas in whatever form they choose to submit them. The Secretariat will attempt to collate these ideas, to identify the prime areas of agreement and disagreement". Then they will lay before the ministers, I would hope in as crisp a fashion as possible, the major areas of decision. The ministers will then have to resolve these questions as best they can, and one would hope that as the result of their spring meeting (which has not yet been confirmed or set up) they could then give a report in some substance to the prime ministers when the prime ministers meet in the fall. I

think that is the kind of agenda that certainly the prime ministers are expecting. Therefore we are somewhat under the gun, if I may use the expression, to produce for the committee of ministers on the judiciary, and they in turn to produce for the prime ministers.

PROFESSOR FOX: May I make a suggestion in dealing with these papers, Mr. Chairman. I am sure that most of us who have read them have, in typically academic fashion, made editorial corrections and suggestions, and maybe it would save time if we avoid discussing those minor literary changes, but just give you our copies and raise only matters of substance.

THE CHAIRMAN: Very good.

PROFESSOR BRADY: I do not know, Mr. Chairman, how you wish us to proceed on these papers; whether you wish members of the Committee to speak on points that strike them or to follow any definite order. If the former, I would like to comment on one thing. I think the paper is interesting, and I agree with John Meisel it is a more sophisticated discussion of the subject than we have had before; but there is one item that seems rather doubtful to me and I would like to raise it. It is Item 4, "Regional Character of the Court":

"The constitution should recognize

"the regional character of the court"

I feel doubtful about that, spelling out in a document on the judiciary or on the Supreme Court, its regional composition. I feel doubtful about it because if you make that explicit, it is likely to open the judges to some pressure from their respective regions that they are supposed to represent. If you left the matter in convention only, I think the pressure would be less or certainly would be less direct.

Surely a member of the Supreme Court must be above not only regional attachments (except in the special case of Quebec which has been recognized, of course, in the past) but appear to. The law the judges are concerned with interpreting is Canadian law; it is not British Columbia law or Nova Scotia law or so on. No provision about regional representation should suggest anything like a regional approach. Yet I think if you have regional representation spelled out, you are apt to imply that. The judges may not so interpret it, but one is pretty sure that interested politicians, or politicians involved in a possible decision of the Court, will remember it.

I think the regional nomination commissions are eminently useful and will help to ensure that no distinguished lawyer from the region is likely to be overlooked. I think that is some guarantee and the only kind of guarantee that personally I think is tenable with respect to

the regional character of the Court.

That is a point that strikes me. I am not sure what my legal colleagues, Mr. Lederman, for example, think about this; whether he sees it in any such light or sees it very differently.

MR. GREATHED: Your concern, as I understand it, is with the implication this might leave, rather than the effect it might have.

PROFESSOR BRADY: Yes.

PROFESSOR MEISEL: You are worried primarily about the principle of the regional court being explicitly stated; you do not mind at all the appointing formula in fact encouraging or ensuring this kind of regional character?

PROFESSOR BRADY: In which they are appointed from different parts of Canada, provided they are eminently competent men, first-rate men to be appointed to the Supreme Court -- no, I think that is very desirable; but the spelling out, as it were, in, say, a constitution that the Supreme Court ought to be composed of men who represent regions, is not what I assume is really implied. I would doubt the wisdom of that.

PROFESSOR LEDERMAN: I do not often find myself differing from Dr. Brady, Mr. Chairman, but I think possibly there is a difference in emphasis between us here. This reflects what I said in my article on the reform of the Supreme Court.

In the first place, I was motivated to some extent by the conviction that the conventional quotas were so firm anyway that you might as well state them.

PROFESSOR BRADY: Are they tantamount to a written clause, as it were, in the instrument that creates the Court, explicitly saying that representation must be regional?

PROFESSOR LEDERMAN: You have had that with Quebec.

PROFESSOR BRADY: Yes, I realize that.

PROFESSOR LEDERMAN: So as a matter of evidence the thing to do is to look at the conduct of the Quebec judges. Have they behaved as delegates of the Province of Quebec? I think all the evidence that I know of is that they have not. I think Peter Russell's findings would tend in this direction. Also, although I cannot name this person, I speak of a very highly placed person who for his own purposes made an analysis of Supreme Court cases over many years, to determine whether the Civil Code of the Province of Quebec had been distorted by Supreme Court interpretation, in spite of the Quebec representation. This is a related bit of evidence. He could not find any voting pattern whereby French or English judges were lined up against one another on points on the Civil Code where you have a mixed panel of Quebec judges and common law judges sitting on it.

So all I can say is that I think the evidence, in the one case where we have it, is that the explicit regionalism has not had this result -- and if you were ever going to get it from regional quotas you would get it there because you have got the additional push of the different legal system and French culture. If there is any place where there is a push for it, that is where you would surely see it.

My argument for explicit recognition of this sort of inevitable regionalism went this way, that the whole background of the judges is very important and what is technically known as judicial notice, that is, you do not have to prove that the sun rises every morning, and this kind of thing, in Court. There is a whole vast background of knowledge of your society that is taken for granted, and in a country as diverse as Canada it seems to me it is for this reason we not only find that inevitably we have quotas and they have been there by political necessity in the conventions all along, but there is virtue in it because you want to be sure that there is a judge from British Columbia on the Bench all the time since in a case arising from British Columbia he will soon educate his other judges on what the Canada Water Act, for example, means in British Columbia, and this kind of thing. It is an assurance that in a country that does have regions, where there are great

diversities, you have collectively in the Court a total background. This is the case for regionalization, not any delegation.

I think you have to trust to two things: the professional traditions of the lawyers who rise above regionalism, and also the terms on which they hold office. A particular judge may have been appointed at a particular time because he happened to be the resident of the region where the vacancy occurred; but once he is there, he is there for life or until he is seventy-five, which is the vital difference from an electoral quota; and there are regional implications about the issues before the Court where he can inform his brother judges and they can inform him about their regions. Their life tenure, their secure tenure in the professional positions, if these things will not carry them above regionalism and other forms of prejudice, you are lost anyway.

PROFESSOR MEISEL: I also find myself in the almost unique position of disagreeing with Professor Brady. It seems to me that an issue here is not so much whether this regional appointment will lead to prejudiced judges, but the fact that stating the principle, as we do here under point 4, would focus on something which would then lead judges to think that they are expected to be in some way regional spokesmen, but I do not think this would happen.

I have some other qualms about stating this regional thing, which may not be too serious, but I think I should mention them. It is this, that there is a lot of talk these days of people like Professor Creighton's friend, Mel Watkins, who is today cited in the Globe as being a fellow-traveller of Professor Creighton's. (Laughter) There is a genuine concern, I think, among historians of ideas and social analysts about the possibility that our quite natural preoccupation with regions in Canada has deflected our attention from some other cleavages which are equally important. I do not want to start a long philosophical discussion of this, although I would be happy to do so at some other time, but I would like to point to the implications of this for the appointment procedure.

What I am getting at is this. There are cleavages other than regional cleavages, such as class cleavages, generation cleavages, which are very important in the kind of atmosphere in which judges make decisions. I think that in explicitly appointing to the regional cleavages and not relating to any others, you are in a sense encouraging the critics of the system to say: "The whole system is loaded against the expression, say, of the poor versus the rich", this kind of cleavage. I think if you do not specify regional representation, although you provide for

it in the appointment provisions, you obtain the same results, but you do not really set up for criticism a particular principle which perhaps is of greater importance during certain periods of our history and less important at other times of our history; and since, if we make this constitutional change now, I presume it is going to last for some time, I think we should take a fairly long-term point of view.

If I may carry this a step further, on page 11 where we do talk about the way in which lists of judges may be prepared by some of these regional bodies, I would at the bottom of the page add to the Ontario example listed, for instance, possibly a group such as law teachers. In other words, I think that to offset some of the biases that the senior legal profession develops for this kind of work it does, it might well be useful to have some law professors. I would hardly dare suggest this, but it may even be possible perhaps to consult law students.

MR. CALLAGHAN: My, my!

PROFESSOR MEISEL: I do not want to get into the details.

PROFESSOR BRADY: It is a fashionable idea.

PROFESSOR MEISEL: I do not know that it is a very good idea in some areas, but I think in some cases. What I am trying to suggest is that

before we fall back on all the old groups which one consults, such as the Bar, Law Society of Upper Canada, I think it might well be useful to consider whether there are other bodies (perhaps more respectable than the students) who should be consulted in some way and who may have some different biases to bring than the groups listed here. Law teachers strike me as a possible group, for example.

THE CHAIRMAN: John, I was wondering how you could possibly disagree with Professor Brady while wearing that St. Patrick's day button!

PROFESSOR LEDERMAN: Mr. Chairman, on that point, I think Professor Meisel has his finger on the answer to this question, and I was going to make this point too. You have got a purely legal, purely official nominating commission here; and what has been proposed here is really a well known technique in the United States. As you know, I am no uncritical advocate of following the American example, but there are some good things there that we ought to look at, and this is the so-called Missouri plan.

The Executive Director of the American Judicature Society, speaking to the Association of Canadian Law Teachers in 1966, said this, and he is talking about political appointment in the United States by Governors and by the national President, and the whole federal judiciary, of course, is

appointed, subject to Senate ratification. He
says:

"A sincere effort has been made over the
"past fifteen or more years in the
"American Bar Association to make available
"the professional opinion of knowledgeable
"lawyers on the qualifications of
"candidates and to urge the appointment
"only of those who meet its standards.
"A great deal of good has been done on
"this by a very devoted and dedicated
"ABA committee, and I think there is no
"doubt that the federal judiciary today
"is of substantially higher quality than
"it would have been if the committee had
"not been at work. It is not, however,
"a complete or fully satisfactory answer
"to the problem, for several reasons.
"The judgment of the lawyers is not
"infallible, and their weakness is to
"place too great a value on legal
"proficiency, to favour what we speak of
"as the lawyers' lawyer. The bar
"committee has never affirmatively
"submitted names --- "

This is the American Bar Committee --

-- but has limited itself to passing
"on names submitted to it, and this is
"undoubtedly right, for it would be too

"much power to put in the hands of a
 "non-governmental agency if the Bar
 "were given the job of nominating the
 "judges. In fact, some people feel
 "that the present situation is going too
 "far --- "

and so on.

"Albert Kales' answer to this was the
 "judicial nominating commission -- the
 "real heart of the merit plan. I will
 "take just a minute to list briefly the
 "important features of the nominating
 "commission as envisioned by Kales and
 "as actually adopted in a dozen or more
 "of the States.

"1. It is a nominating rather than a
 "confirming body, rendering affirmative
 "assistance in going out and finding
 "the right man rather than passively
 "approving or disapproving of names
 "submitted to it.

"2. It contains lawyer members, in order
 "that the vitally important viewpoint of
 "the Bar may have a voice in evaluating
 "and choosing the nominees.

"3. It contains at least one judge, in
 "order that the interests of the bench
 "itself may find appropriate expression.

"4. It contains laymen, in order that

"technical legal questions may be
 "kept in proper proportion to the equally
 "or more important considerations of
 "general education, integrity and
 "sensitivity to human problems"

Then the rest is technical:

"The commission itself does not make the
 "precise and final choice, but only
 "makes a preliminary selection, leaving
 "it to the Governor or other appointing
 "authority to make the final selection.
 "6. The Governor is required to
 "appoint from the commission's nominations,
 "and may not accept them when they please
 "him and disregard them when he feels
 "like it."

Finally:

"7. In the membership of the
 "commission, politics is minimized by
 "making it either non-partisan or bi-
 "partisan, and its nominations are non-
 "partisan, with an effort to draw on the
 "judicial talent of both parties."

So that there is a classic statement of
 the Missouri Plan, and it does call for the
 broader membership in the nomination commission
 that Professor Meisel went into.

--- Luncheon adjournment, 12:50 to 1:40 p.m.

THE CHAIRMAN: Shall we carry on with our paper on the judicial structure. I should report we have received a number of very detailed but helpful discussions on this paper also from Professor Forsey, with the general qualification that he would be guided by Professor Lederman and others on this, but he has raised some questions and we will take those into account in the revisions.

PROFESSOR CREIGHTON: Can a layman make a remark, Mr. Chairman, although I hesitate to do so in this company. Others have noted with regret that they disagreed with Professor Brady. I note at this time, with some surprise, that I agree with him. I accept his view in regretting the explicit recognition of this regional representation, but there is another point about it, that the regional representation is precisely indicated in numbers. I know of no place in the paper, although I have not looked at it as carefully as others have, where provision is made for a possible change in this precise representation. Am I correct in that assumption that there is no place?

I should think that this is a very, very doubtful provision indeed, because the only apparent justification or basis for the precise distribution as it stands is population. If there is another basis, I would like to be informed of it. If it is population, the distribution of population in this country is going to change very materially,

it seems to me, within the next few decades, and to fix this for all time the way it is fixed in this paper, I think, would be extremely foolish and regrettable.

MR. LEDERMAN: Mr. Chairman, I was not arguing the population basis, because none of these proportions reflect the population.

PROFESSOR CREIGHTON: What basis is it? I say I would like to be informed if there is another one.

PROFESSOR LEDERMAN: It is the argument I was making about judicial notice and diversity, collectivity of knowledge, that is the basis. That is where I rest.

PROFESSOR FOX: I think Donald is referring to the specific ---

PROFESSOR CREIGHTON: The numbers.

PROFESSOR LEDERMAN: If you do not put some quota on it, are you contemplating a situation where there will be no judges from the west because the more eminent lawyers are in the east?

PROFESSOR CREIGHTON: You are contemplating a situation in which there may be more people out west who think they ought to be entitled to more judges if you start admitting representation by area or region.

PROFESSOR LEDERMAN: All I can say is that I am in print on this and I stand by what I said: I tried to distinguish very carefully between this

kind of quota representation and the population representation that you look for in a parliamentary body; it is not intended to be representative in that sense at all.

Again, I point to the fact that this is, as the young people say, selling it like it is; it is going to be this way anyway.

PROFESSOR CREIGHTON: Selling it as it is now or in the future or when?

PROFESSOR LEDERMAN: You can make that point about any part of the constitution.

PROFESSOR CREIGHTON: Right.

PROFESSOR LEDERMAN: And the answer is the constitution amending process. Anything you put in the constitution is going to be fixed and may require change at some future point, and the answer to that is: What is your constitution amending process? That is another question.

MR. POSEN: This is what I was going to say. It is difficult in reading these papers in isolation because, of course, they are part of a whole constitutional review, and one of the subjects yet to be reviewed is the amending procedure. Of course, when we get to that, we will have to consider how one would amend these sections on the judiciary.

PROFESSOR CREIGHTON: I think my point still stands, Mr. Chairman, that this explanation which my colleague has offered here is not, as far as I read it, present in this paper. There is

no justification for the precise numbers assigned.

PROFESSOR McIVOR: Mr. Chairman, Professor Lederman made some reference before lunch to a selection procedure for the United States Supreme Court. Can anything be said concisely of the role of regional considerations, either constitutionally or informally, as a criterion of selection to other supreme courts, such as in the U.S. or Australia, for example?

PROFESSOR LEDERMAN: I was not thinking of the selection of supreme court or federal judges in the United States.

PROFESSOR McIVOR: No.

PROFESSOR LEDERMAN: But the Missouri Plan is still used at the state court level.

PROFESSOR McIVOR: Yes, just in your direction, your general reference to the U.S.

PROFESSOR LEDERMAN: A number of the new common law countries are using judicial commissions of the broader Missouri Plan type.

PROFESSOR BRADY: There is no explicit assignment of members of these courts, however, to different regions.

PROFESSOR McIVOR: My question was: Is there any explicit regional criterion in the appointment of Supreme Court justices in the U.S. or Australia or elsewhere?

PROFESSOR LEDERMAN: I think there is the same conventional background that there is

here. When Justice Brennan from New York State goes off, I do not think the next appointment will be from California, but I am not sure of the precise practice in the United States Supreme Court. Maybe Mr. Callaghan would know.

MR. CALLAGHAN: No, I am pretty sure there is not any practice. In Canada we have always had an implicit regional recognition of the area in the membership of the Court, but in the United States as far as I am aware it is not run that way. They are picked on the basis of political expediency.

PROFESSOR CREIGHTON: A different kind of political expediency, surely?

MR. CALLAGHAN: Yes. I was just trying to think. I do not think they have one member there from the west coast.

MRS. WILENSKY: They also have a rather implicit religious and ethnic distribution that is taken care of on the Court, which is implicit in the same manner that the regional one is implicit in the Canadian Supreme Court. For example, the Americans now have a representative of the blacks on the Court, which is Mr. Justice Marshall. That, of course, was never there before, because when they appointed him some other group that might have been represented is not now represented.

PROFESSOR CONWAY: They have always had a Jewish and Catholic member, at least in modern

times.

MRS. WILENSKY: Yes, until now.

PROFESSOR FOX: Your point was that Warren was the California representative. Now I suppose the present attempt is to nominate Haynesworth and before that Fortis; those would be replacements for Warren.

MR. CALLAGHAN: They would be.

PROFESSOR FOX: Neither of those men was from California.

MR. CALLAGHAN: Neither is the present one, Carswell.

MR. POSEN: That is the region they are trying to represent, the south.

MRS. WILENSKY: In other words, it is regional, but it is not always the chief reason they are looking for them in the same way as it is ethnic or religious, but the composition of what important groups they represent is still apparent.

PROFESSOR FOX: I was going to say, Mr. Chairman, that there are two bits of information that came out of the Russell study as I recall. I am sure he gave a breakdown historically of the points of domicile of the judges when they were appointed; and the point you are making, Bill, that there has been regionalism in the Courts is certainly confirmed by that analysis. Although Quebec was guaranteed three members by the statute, the other areas have certainly had provision for

their representation which has been as effective, in fact, as that clause in the Act.

Secondly, in reference to the point you made earlier about the fact that regionalism had not distorted the judges' opinions apparently, as I recall the Russell study it said the only difference really that could be discerned in the voting decisional record of the judges from Quebec revolved around civil rights cases but not around certainly Quebec issues or even Civil Code cases.

PROFESSOR LEDERMAN: Then he found out that the common law judges on the Supreme Court were really in sympathy with the new wave in Quebec.

PROFESSOR FOX: Yes.

PROFESSOR LEDERMAN: And that the new quiet revolutionists of Quebec were turning to the Supreme Court of Canada because that is where they were finding sympathetic interpretation.

The private survey I quoted earlier just showed that there was no regional pattern that could be fixed in voting on the Civil Code cases, the position judges took on the Civil Code cases.

MR. CALLAGHAN: I really do not think there is a regional outlook in the members of the Court once they are appointed. There seems to be something about making a man a judge, particularly in the Supreme Court of Canada, that our court in the last ten years anyway has indicated that they do not necessarily represent their regions. The

benefit the law derives from the appointment, the law itself as opposed to the social aspects of it, the benefit it derives itself from regional appointments is the fact that they bring to the Court an expertise in the particular provincial legislation involved or particular provincial problems, but as far as the application of their legal training is concerned regionalism does not show up at all, as far as I am concerned, in making judgments.

MR. STEVENSON: Mr. Chairman, on Professor Creighton's point where he suggests that we should not be so specific, I take it there are three possible ways of dealing with the problem of population shifts. One is not to make any specific regional allocation; the second one, of course, as was mentioned by Professor Lederman, is to leave it to the amending process; the third one might be, I suppose, to have a possible review clause in that section for a periodic look at the allocation in the section. I was wondering whether anyone has any comments of the advisability or inadvisability of that kind of provision.

PROFESSOR CREIGHTON: I think there ought to be an amending section in that part of the Act itself, whatever it is, not to leave it to some general formula.

PROFESSOR LEDERMAN: It could be pretty hard to use regional nominating commissions if you do not allocate them quotas.

MR. CALLAGHAN: That is right. If you do not have regional quotas, you have to have a national nominating committee.

PROFESSOR LEDERMAN: Yes.

MR. POSEN: The question becomes: Is there any way of building in a way of changing quotas? Do we tie to something; do we say that when the population shifts in a certain province by 10 per cent they are entitled to another?

PROFESSOR CREIGHTON: This is what you want to get away from.

PROFESSOR LEDERMAN: This is where the point I was making will have some bite, I think. I confess to some uneasiness about quotas in a Court like this, but we have to live with all kinds of imperfections and the alternatives seem worse to me. What you are after is an assurance that there are judges from each major region of the country on the Court, so that the know-how and the knowledge that you get from living in that part of the country is represented in the general background of the Court. This does not depend on precise numerical ratios; it does not depend on having more judges from Ontario if there are more people in Ontario ten years hence. Three judges from Ontario can still carry the ball from the Ontario point of view, even though Ontario has ten million people ten years hence. We do not have to change the Ontario quota when the quota exists for the reason

I am describing -- the background of knowledge, not a precise mirror of representation by population.

PROFESSOR BRADY: Is it not the case, Bill, that the regions have not always been represented; that renewal of members of the Court have not been rapid enough to give recognition to ---

MR. CALLAGHAN: B.C. is not represented now.

MR. POSEN: There are only four regions now.

PROFESSOR LEDERMAN: The custom has been that the west has two seats and there are four provinces.

MR. CALLAGHAN: There is a basic fallacy in regional representation, I think, and it is this. If you appoint a man from a region, presumably because he is aware of the problems in that region, I think the fallacy is more apparent today with the almost daily changes in your social problems. If you appoint a man from Saskatchewan, according to the Supreme Court Act he has to move to Ottawa to live. He takes up residence in Ottawa, and three years later he has very little cognisance in my opinion of the actual problems that are taking place in the region he comes from, because he is no longer directly connected with it.

So regionalism is really a sort of nice way of saying "We recognize you" but I do not think the practical effect of his background is going to

influence the decisions of the Court, because his background no longer has any practical basis once he goes to Ottawa. He knows the problems when he practised law there five or ten years ago but most of these men stay on the Court for at least fifteen years, and I think they are pretty removed from the original province when they enter the Ottawa cocktail circuit.

MR. GREATHED: Frank, I think what Professor Lederman had in mind was something a good deal deeper than the current awareness of present conditions or problems. I think it is one's whole upbringing (correct me if I am wrong), one's whole perspective, upbringing, ties and everything else which, brought together, brings a source of additional knowledge to the mutual education process of the judges.

MR. CALLAGHAN: That would imply then that the person you appoint is a person born and raised and who practised law in a particular region all his life, and that does not necessarily hold. Rand went west, and he practised law in the west for five years; then came east and practised in New Brunswick for a number of years; then he went to Ottawa and practised law with the C.N.R.

MR. STEVENSON: What region was he expected to represent?

MR. CALLAGHAN: He represented the eastern provinces, but a man can go west, practise for five

years and become very well known and connected politically and can get appointed representing the western region.

PROFESSOR LEDERMAN: I was born and brought up in Saskatchewan, and I will wager ---

PROFESSOR BRADY: You never lost your perspective.

PROFESSOR LEDERMAN: Never lost the perspective that is as relevant today as it was then.

MR. CALLAGHAN: Not everyone taking your position would take that point. I do not think this is necessarily true.

PROFESSOR MEISEL: Another very important aspect is that one of the reasons for having them appointed this way is to give people in the regions the sense (whether justified or not) that they have some voice in influencing the personnel of the Courts, even though they may be getting some carpet-bagger from the east.

MR. CALLAGHAN: Surely that is the only way you can justify it.

PROFESSOR LEDERMAN: One of the main complaints of the west today and one of the sources of alienation there is the conviction that things gravitate to central Canada not because of wholly rational economic matters, but because "birds of a feather flock together" in the great board rooms of the country, and they like to live in the same

cities and frequent the same clubs.

THE CHAIRMAN: And lay the odd eggs.

PROFESSOR CREIGHTON: Mr. Chairman, I think at any rate this discussion has brought out the fact that if this is the paper for the Province of Ontario it has an essential weakness on this point. If you are going to propose a scheme of this kind, I think you ought to justify it, or else your critics will assume, as I had assumed, that it was based on some population distribution, which is not the case. If there is another reason, it ought to be adverted to.

PROFESSOR LEDERMAN: I think your point is well taken, if there is another reason, whether it holds water or not. As I say, I have my own misgivings about the quota. Ideally one should range the country with a national commission and look for just the very best people, but in this country have we ever been able to do that with any of our institutions?

PROFESSOR FOX: Only with universities; solve it by importing from the United States.

May I suggest one thing, Mr. Chairman, on which maybe we can all agree, on the middle of page 10. Whatever our views are, I would guess that perhaps we would feel that the sentence commencing "rather" ought to be rewritten.

PROFESSOR LEDERMAN: In this paragraph the writer of this paper is making a point I am

talking about. Perhaps it ought to be expanded.

PROFESSOR FOX: Yes. It seems to me there is a feeling here that this is not justification for appointing people, even if you have a regional concept at work.

PROFESSOR LEDERMAN: There is not a ratified population?

PROFESSOR FOX: That is right, and thinking about Frank's point a minute ago about people moving around the country. When I read through the paper, suddenly when I came to this I felt: "That is a weak point". Does it strike other people that way?

PROFESSOR CONWAY: It depends how you look at it. I had occasion to study very carefully all the submissions of the federal-provincial conference of October 1969. One thing that was very clear in the provincial submissions is this feeling of alienation, starting with the Premier of Manitoba going to Saskatchewan, Alberta, British Columbia. That is a fact of political life in Canada, and if some such provision as this is not made, that feeling of alienation is going to be intensified. It is in the record. Read what Mr. Weir, read what Mr. Bennett said.

I was interested this morning to note that Mr. Anderson unintentionally kept using the word "border". There is Quebec and there is a border and this is English-speaking Canada. That

is assuming a unity that does not exist. It is felt very strongly out west.

THE CHAIRMAN: The purpose today is to gather these comments and advice with a view to amendment and adjustments in the paper, and we certainly are following these, I think, in our usual fashion. We are not seeking consensus, but we are seeking advice. Are there any other comments on this paper?

PROFESSOR FOX: I would like to come back to an earlier one in which I find myself confused -- point 3 on the "Docket of the Court" on page 8. Under the recommendation it says:

"The present work-load of the Supreme
"Court of Canada is too great. Many
"non-constitutional cases now engaging
"the Court's time are appealed ... "

and so on. So there the concept is non-constitutional cases. If we go over to the last paragraph of that section on page 9, it says:

"Such a reform would not deny anyone
"the right to appeal a decision. Any
"citizen could raise a constitutional
"issue ... "

Was the author of the paper thinking that only constitutional cases are to be appealed? Can non-constitutional cases still be appealed by leave -- admittedly by leave. What is the thinking in this last paragraph? I find a

confusion here.

MR. GREATHED: Would you comment on that, Gary?

MR. POSEN: I think it is in our re-writing we missed the point. I think the easiest way would be to cut out in that sentence "Many non-constitutional cases" and say "Many cases now engaging ... "

PROFESSOR FOX: It was your intent not to prevent non-constitutional cases going to the Court, only to require that they have leave?

MR. POSEN: Right.

DEAN LEDERMAN: Because the position is taken that this is a general Court of Appeal and its competence as a constitutional court flows to some extent from its competence as --

MR. POSEN: I think in both those citations, "Many cases now engaging the Court's time" and on the other page, "Any citizen could raise an issue affecting his rights".

PROFESSOR FOX: Yes, that would be it. You see my point.

MR. POSEN: Right.

PROFESSOR LEDERMAN: There may be non-constitutional cases which are still of national importance.

PROFESSOR FOX: Right.

MR. GREATHED: Mr. Chairman, I would very much appreciate on this particular paper if

members could give some attention to the three alternatives posed under the appointment procedure and beginning on page 12. I think very genuinely we have a problem we are trying to solve here, and we are not at this point precisely certain which way it should be resolved. For this reason we took the rather unusual course of posing these alternatives. Needless to say, in the final paper it will have to be reduced to one, but if members do have comments on these particular avenues of action I would appreciate them very much.

THE CHAIRMAN: Is there any one of these alternatives favoured by a number of people here?

PROFESSOR MEISEL: There is one point that was no doubt noted. Alternative 1 on page 12, if you think entirely in terms of mathematical proportions here, the moot formula with thirteen judges would reduce the proportion of the Quebec judges by a fraction of a fraction, and I do not think it would matter much except that politically it might be every important.

PROFESSOR LEDERMAN: My inclination would be to cut it through the middle of the present nine and the proposed thirteen, and to make it eleven, with the extra judge to the Maritime region and the extra judge to the west. That would give you three in the west and would give two to the prairie provinces and one to British Columbia. You get

your five regions that way. Then you are just at a total of eleven, with nine as the quota for constitutional cases.

MR. STEVENSON: But you would still have this three from Quebec.

PROFESSOR LEDERMAN: Three from Ontario and Quebec, yes.

MR. STEVENSON: Therefore you would be decreasing Quebec's proportion even more.

PROFESSOR LEDERMAN: I am quite prepared to do that in Ontario and Quebec, for reasons I gave a few minutes ago.

PROFESSOR MEISEL: In practical terms, that is not something surely one can nowadays seriously consider, is it? I think if you reduced the total proportion of Quebec's representation on the Courts, you would not have a chance of getting it through.

PROFESSOR LEDERMAN: Maybe not. I do not know.

MR. CALLAGHAN: I would like to make a practical comment on that. I have discussed from time to time the question of the number of judges that could expeditiously handle an appellate court docket with the members of our Court of Appeal, and I never discussed it with anybody in Ottawa; but I know that the senior members of the Ontario Court of Appeal particularly feel that nine is the maximum number of judges that can adequately conduct a

Court of Appeal; because when the number gets larger than that, the differences of opinion become too hard to reconcile in order to develop a body of case law. I have had it suggested from our own Court of Appeal that probably the best number for any Court of Appeal would be seven.

That would be impractical for the Supreme Court of Canada. I notice in the United States, of course, the Supreme Court is made up of nine; and there have been a number of reports written and comments passed that even in that Court they feel seven would be a more appropriate number. The larger a Court gets, the more unmanageable it becomes. So from that point of view I wonder if maybe the present number is not adequate. Your representation could be one from the prairies, one from B.C., one from the Maritimes; then three from Ontario and three from Quebec. You would avoid the problem that you have raised.

PROFESSOR FOX: That is a persuasive argument to me, Frank, but I do not know the workload of the members of the Supreme Court. It was my understanding from what I have read of it that they labour under a heavy workload and need additional members. Secondly, how often do they sit as a full Court?

MR. CALLAGHAN: In the Supreme Court of Canada, the only time you can be absolutely sure they sit as a full Court is on a capital case.

They try to sit as a full Court on all constitutional cases, but there have been a number I know from my own experience in the last few years where because of sickness and things of that sort they have had to sit with seven.

Increasing the number of judges does not necessarily resolve the workload. I am sure in the Supreme Court of Canada they feel the same way about it, that the workload will be resolved by reviewing your jurisdiction and removing appeals as of right in cases over \$10,000, things of that sort. They would operate, I am sure, quite efficiently with nine judges if they had control of the cases that go there -- in other words, if all cases go there by way of leave. This is primarily what they have in mind, and this is what I think the Minister of Justice for Canada is going to introduce; give them that jurisdiction.

In the United States Supreme Court nine judges of that Court dispose of at least forty-five per cent, I think, more cases than our Supreme Court does. The reason for that is the methodology of handling cases. They do most of their work on the basis of the written brief and one hour over argument. I am sure that our Supreme Court will eventually have to come to that, if it wants to get through its dockets and maintain some sort of standard of judgment. The problem they are faced with now is the great volume of work.

Lawyers go and talk for days and they let them talk for days, on minor cases, and the lists back up. However, I do not think that the solution to their problem is increasing the numbers. Indeed, I think that might very well dilute the type of judgment and the efficiency with which the Court is run. By "type of judgment" I mean the standard of the judgment is not what it should be.

PROFESSOR BRADY: Is the workload of the Court going to be reduced by the reform of the Exchequer Court to take on some ---

MR. CALLAGHAN: I do not know what that is going to do to the Supreme Court. It is going to reduce the workload in the Ontario Supreme Court, because it is removing some jurisdiction from that Court that it had before. The only area where I can see it might reduce the workload, and I have not really studied it, is the area of Admiralty law. In the Supreme Court of Canada they hear Admiralty cases on matters of fact by three judges, and that takes some time. I think this new bill provides for a Court of Appeal to federal Court to dispose of those cases. Again, the appeals would then only go up by way of leave. I guess as a matter of the workload coming out of the Exchequer or federal government business will be reduced. I have not really studied that aspect of it, but I am pretty sure it will be.

MR. POSEN: One aspect that has not been

commented on with these alternatives, of course, is that we put them in to try and solve some of the complaints that have emanated from Quebec about the Civil Code, and of course this idea of increasing the number of judges was to provide that on a panel of five hearing a Civil Code case, four out of five judges would be from the Bar or Bench of Quebec, trained in the Civil Code.

Alternative 2, of course, attempts to solve the same problem by restricting allowing the Legislature of Quebec to decide whether or not they wish the Supreme Court of Canada to hear Civil Code cases.

The third alternative ignores the whole issue and just suggest that we go on with nine judges; makes no reference to the Quebec Civil Code problem at all and was put there because it is an alternative for the Government of Ontario. They may not want to say anything about this issue whatsoever.

PROFESSOR LEDERMAN: This is a complaint from Quebec about the Supreme Court of Canada that has not stood up to analysis by either Peter Russell or anyone else. They cannot make that misstatement that the Supreme Court of Canada has distorted the Civil Code of Quebec. It has not, and I do not think constitutional reform should be based on mythology that will not stand up to analysis.

PROFESSOR MEISEL: I would agree with that. I do not know how widespread this feeling is in Quebec, but if there is a feeling that robs the Court of some of its legitimacy or creditability you have to take it into account even if it is a tissue of lies.

PROFESSOR LEDERMAN: If it is a non-constitutional case from Quebec, and it does not involve issues of national importance, I would not care if the appeal stopped with the Court of Appeal for Quebec. If it is a case involving a Quebec Civil Code point and it is going to be carried forward to the Supreme Court of Canada and, again, it does not involve a federal constitutional issue (as, for instance, the padlock law case did) the solution, I think, that is in one of the federal White Papers somewhere is opened that for the particular purpose of that case you appoint a judge ad hoc, or a couple of them ad hoc, from the Superior Court of Quebec to sit as Supreme Court of Canada judges for the purposes of that case only. Then you can get a majority of three to one or four to one or five to two or whatever you want of Quebec judges over common law judges for the hearing of that particular Supreme Court case that way. This does not involve changing the permanent membership of the Supreme Court of Canada. It is a way of meeting that Quebec objection.

MR. POSEN: You find that an adequate

solution? Of course, these would have to be judges who have not sat on the case in Quebec.

PROFESSOR LEDERMAN: Of course, it has to be someone who has not been near the case as it came through the Courts of Quebec.

PROFESSOR BRADY: That is a remedy, whether it is of great authority or not, that is arguable. There was a letter in the Globe & Mail, I think, a year ago.

PROFESSOR LEDERMAN: Of course, the power exists now in the Court, because they have to do this in order to be able to keep up the strength of the Court in the event that too many are ill or the appointments have not been made or something of this kind. The power is there now to appoint ad hoc judges from the Superior Courts of provinces.

MR. CALLAGHAN: They do not use it.

PROFESSOR LEDERMAN: I can recall one or two cases where it was used, but they are way back in the 1920's or 1930's.

MR. CALLAGHAN: Before my time.

PROFESSOR MEISEL: Mr. Chairman, if you want to have us express a preference for these alternatives, I am ready to go on record as saying I do not like alternative 2; simply because, if I remember the Russell study rightly, he makes quite a case for the usefulness of the interaction on the Court between the two kinds of judges, and that they develop a sort of national outlook or

view which results from judges hearing both kinds of cases. I think by really sequestering all these cases from the Supreme Court, you would deprive Canada of that type of experience. For that reason I do not like it much.

PROFESSOR LEDERMAN: There is another argument for that very line you are taking, and that is this, that the systems of law are not all that different and they are growing closer under the pressure of modern conditions, and that modern legislation is eroding the differences between Civil Code and common law. It is no longer classic nineteenth century Civil Code, Code Napoleon, versus classic nineteenth century English common law. It is just that 60 or 70 per cent of the cases before the Courts are modern statutes in Quebec and in Ontario. There is a lot of hocus pocus about this that ought to be pinned sometime.

PROFESSOR FOX: Bill, that precise argument (and I quote the argument for what it is worth) is used against your position too, namely that this is leading to the destruction of the unique Quebec Civil Law, and resulting in the emergence of a new comparative public law. That has been argued by various French Canadians.

PROFESSOR LEDERMAN: Yes, in response to the needs of our society, and the common law has been changed just as much too.

PROFESSOR FOX: Yes, but the point I am

making is that your argument will not assuage the critics of what is happening. I mean, by telling them it is happening, you do not deflect their argument.

PROFESSOR LEDERMAN: I am not prepared to assuage critics with mythology.

PROFESSOR BRADY: Nationalist does not approve of homogenization!

MR. STEVENSON: Mr. Chairman, there have been a number of people pointing out problems about alternative 1, and others pointing out problems about alternative 2. Does this mean that one is forced into the status quo, which is alternative 3?

PROFESSOR MEISEL: Definitely not. I must say, Mr. Chairman, that I was struck by Mr. Callaghan's argument -- the first time I have heard it. I guess most of the people I have read on this have always thought in terms of solving the problem by making the pie bigger and giving everybody a bigger piece. This is a most interesting suggestion, and I am struck by it. I was not aware what the workload was in the Supreme Court.

By the way, who permits an appeal to the Supreme Court by leave? Is it a quorum or one judge?

MR. CALLAGHAN: First, there are two ways you can go. One way is you can get leave to appeal from the Court of Appeal that you are appealing from, if they see fit to grant you leave

on application to that Court. So there you would have three judges of a provincial court saying you could go to the Supreme Court of Canada.

If they refuse or you want to by-pass them, you can go direct to the Supreme Court of Canada, and they usually sit in a quorum of three and decide whether or not leave should be granted, but there are types of cases which one judge will decide. Usually for anything of significance they would sit at least three. Under the Criminal Code now I think they are obliged to sit three. A few years ago one judge refused leave on a capital case and it raised a furore.

PROFESSOR LEDERMAN: That was the Coffin case.

MR. CALLAGHAN: The Coffin case. One judge refused leave to appeal. As a result of that, I think the Code was changed to require three to hear applications for leave. Generally they sit on virtually everything; they sit three judges on all applications.

PROFESSOR BRADY: Might I ask whether you would approve an alternative 1 that would not increase the size of the Court?

MR. CALLAGHAN: The regional thing?

PROFESSOR FOX: No, composition -- page 12 as opposed to page 14.

PROFESSOR LEDERMAN: In other words, put in a fifth region and give it a judge, at the

numbers of nine and not at the numbers of thirteen.

MR. POSEN: That is essentially alternative 3.

PROFESSOR MEISEL: But actually an appointment would still be through recommendation emanating from ---

MR. CALLAGHAN: Personally, my own view is it is unacceptable that the nine men sitting on that Court should be chosen from anywhere in the country; because I think at that level you should get beyond regional issues and you should be looking for the best people to decide these cases.

I think under the American system generally, when they make their appointments on the basis of expertise, they produce a pretty good Court. That does not always hold. That Court is now changing considerably.

At this level I would like to see a Court which represents the finest legal minds in the country, because they are primarily deciding and trying to unify the law across the country. To me, regional recognition is a political factor, and the politicians have to decide whether it is something they want to insert in the composition of this Court. I think we have enough regional representation in Canada without putting it in at that level. I cannot get too excited about that. I find the other things, I guess because I am a lawyer, more important.

PROFESSOR MEISEL: Well, whilst speaking as an old academic, I am too impressed by the political realities. I do not think you can escape it.

MR. CALLAGHAN: You probably cannot, and if you cannot I do not see why the three prairie provinces cannot be treated as one section, the Maritimes as one section and B.C. as one section.

PROFESSOR BRADY: Incidentally, Kenneth Bailey, who I think is a very good lawyer and who was Deputy Attorney General in Canberra and Dean of the Law School at one time in Melbourne; he was here in Canada as High Commissioner and I was asking him about the High Court about a year ago, what he thought of the High Court of Australia compared to the Supreme Court of Canada. He said: "Generally, I think our High Court has been a stronger court than your Supreme Court. We do not have to recognize regionalism; we do not actually. We are much freer in our selection of the most capable lawyers." That is an opinion, but it is an opinion of a man of considerable experience.

PROFESSOR LEDERMAN: I think this is true of the whole Australian Court system, not just the High Court.

PROFESSOR CONWAY: Why is that, do you suppose?

PROFESSOR LEDERMAN: They are a little closer to the English tradition, and they do not

have the diversity of regions and populations that we have. I think the point is valid by comparison with the Australian Courts, but there has just been published a mammoth history of the Justices of the United States Supreme Court. I have not read it, but I have read a long review of it in the New York Times book review, and the effect of it is what an undistinguished Court it has been throughout most of its history and how many mediocre figures have been on the United States Supreme Court Bench.

MR. CALLAGHAN: That is true. There are mediocre figures on every Bench. I think our Supreme Court of Canada has had plenty of them, too.

PROFESSOR LEDERMAN: Yes, but the idea we seem to have is that the distant field looks green, and the idea we seem to have of the United States Supreme Court has been "par excellence" all the way.

MR. CALLAGHAN: I am not suggesting that.

PROFESSOR BRADY: The great names have been very great jurists, and we think of them.

PROFESSOR CREIGHTON: Can't think of any of our own.

MR. CALLAGHAN: We have never had an academic on our Supreme Court, and they have many on theirs and can produce quite a number.

PROFESSOR LEDERMAN: Rand, I would say, compared favourably with anybody who was on.

PROFESSOR MEISEL: Speaking of academics,

has my suggestion that the electoral college be augmented by people other than lawyers been totally abandoned as a crack-pot thought?

MR. POSEN: Only in this sense, that it was once raised before that the person who might have to choose the person from the other side -- the suggestion was there be someone representing the general public, and the response was: "Would you like to be in the position of having to choose someone from the general public and then not be accused of picking your friend?" The difficulty is, if you say a non-lawyer or layman, representative of the public, should also be on the commission, the person who has to choose that person is in a very difficult predicament.

MR. GREATHED: This is part of an earlier draft, we had this suggestion, I think.

PROFESSOR MEISEL: I still see some other possibilities, though. The law teachers are one. At least they are people who know something of the law but are not practising law. I think it diminishes one bias a little bit. I do not know if Bill Lederman knows much more about what sort of people. I do not know what law teachers look like.

PROFESSOR FOX: They are handsome chaps.

--- (Laughter)

PROFESSOR MEISEL: I was thinking collectively.

PROFESSOR LEDERMAN: There is quite

a generation gap between the rest of the profession.

PROFESSOR BRADY: We have two law teachers on this Advisory Committee.

PROFESSOR LEDERMAN: They have been able to solve this in the American states where the Missouri Plan is working, somehow. I think one ought to examine more closely what they have done there. You could go further with ex officio things. You could, for instance, say the senior university president in the province provided he is not a lawyer, in order to get a non-lawyer, things like that.

PROFESSOR MEISEL: In the provinces where they have an ombudsman, for example. Again, he is probably a lawyer.

PROFESSOR LEDERMAN: You are apt to get a lawyer again; not necessarily, though. A couple of them are not.

PROFESSOR BRADY: Would you have, Bill, deans of law schools?

PROFESSOR MEISEL: The most junior dean of law!

MR. CALLAGHAN: What is he going to know? I have nothing against law deans or law teachers, but what is he going to know about the capacities of the practising lawyers? He might know something about judges, but if you are appointing people from the profession to the judiciary, then what is a law teacher going to know about Joe

Smith, counsel for Loblaw's Groceries in western Canada, whether he is capable of sitting on the Supreme Court of Canada? I do not know; I just cannot see it.

PROFESSOR LEDERMAN: Of course, the nominating commissions generally are not going to have personal knowledge of the people on the lists. They are going to have to build up files and assess them.

MR. CALLAGHAN: That is right; they are going to have to look them over. I just do not know; I am not enamoured of that suggestion. I shall have to think about it and I will have a good reason why --- (Laughter)

THE CHAIRMAN: It seems that a general question lies between the surface of a lot of this groping, and it is this. What do we really look upon the Supreme Court to be? On the one hand, are we looking for a body of the most technically proficient people in the interpretation of the law? There seems to be an implicit assumption that the Court is something more than that, that it is a social-shaping institution almost. It raises the basic question in my mind whether this would be the case or not.

PROFESSOR LEDERMAN: In a federal country, I do not think there is any escaping from the Court being what you call a social-shaping institution. This does not mean that they are

as free-wheeling in policy as a cabinet or legislature can be, but to think that they are free of policy pressures just is not the real world. They cannot decide on the things they are called upon to decide even today without explicitly making policy decisions -- at least, having their decisions go one way or the other on the basis of evaluative criteria about what is good, bad, better or worse in your social organization. Look at the off-shore case and the National Capital Commission. I mean, the judges and lawyers who think they are not dealing in high political decisions as far as high legal decisions at that point, are kidding themselves. They are up on Mount Olympus whether they know where they are or not.

THE CHAIRMAN: Is it too much to expect that they could make that separation in their own minds and in their own judgment?

PROFESSOR LEDERMAN: I do not think there is a separation to be made. I think you just make the best -- you are not responsive to Quebec and you are therefore in a position, as a High Court judge, to take a longer range view of the public interest. You have a different view of what is in the public interest in the long range because of your security of tenure. This is where the main difference lies, at this level.

THE CHAIRMAN: We get back, I guess, to the debate about entrenchment and so on that is

all behind my feeling. It frightens me to think of a group of men in that position.

PROFESSOR LEDERMAN: If it is only in relation to the distribution of powers, that is one thing. If you are talking about a specially entrenched Bill of Rights, then it becomes a power to review the legislation from parliaments in detail, and that is another; but the normal distribution of powers problem for a High Court is: "Either the federal parliament or provincial legislature can do this. Which is it?" They do not say no-one can do it; they do not say no-one should do it because it is bad legislation. They say: "Good, bad or indifferent, who can do it?"

If you are applying a Bill of Rights, you say: "Is this good or bad in relation to the standards of the Bill of Rights?" If it is bad you say that no legislature can get it if it is a question of entrenched Bill of Rights. That is the judicial supremacy that I fear, not this distribution of powers supremacy. You have to have a referee of some kind, and this is where I say there is no escape.

THE CHAIRMAN: But it becomes a question whether it is the ultimate referee or not, whether it is an arbiter or an analyser or a final decision-maker.

PROFESSOR LEDERMAN: Well, the ultimate

referee is the basic belief of the people. The most basic constitutional law is the fundamental customs and beliefs of the people, and they will somehow be asserted in the end if necessary.

PROFESSOR MEISEL: But they are hard to invoke within a short period of time. One of the great functions, it seems to me, historically, of say, the Supreme Court of the United States and other Courts, has been to adjust -- sometimes too slowly, sometimes perhaps too quickly, sometimes just right -- how these wise and impartial men have interpreted the legal problems within this general setting of the social assessment of the times.

I think by biasing the composition with more establishment-minded members of the judiciary, you are probably making the Court a little more rigid than would be the case if you had other judges who perhaps are not quite as respectable in some sense but are still toally acceptable to people like law deans but are not, of course, linked with the highest legal establishments.

PROFESSOR LEDERMAN: In the McRuer Report No. 2, Volume 4, we attempted to deal with these (what I call) paradoxes of fundamentals -- a hundred pages on it in there.

THE CHAIRMAN: I had better go and read that, because I think it is a terribly basic question, particularly when one is thinking about not just what the Court has been in the past but

what it might be in the future, in an age when the public has got its foot so much further into legislative and parliamentary procedure than it ever has before.

It raises a question in my mind about the basic balance of the relationship between the parliamentary and the judicial institutions and what it should be in the future, when we are talking about social questions and social institutions.

I do not want to cut this off, but I do not want to keep you here all day. What is your wish? Are there other matters?

PROFESSOR BRADY: Has Mr. Greathed got an answer to his question?

MR. GREATHED: I think we can weave through this discussion and submit to our masters something which represents a rough consensus. It will not be a perfect one, but of course ultimately it is they who have to decide what is going to be submitted, so that I think what we really wanted was the benefit of some discussion on this. It received very intensive discussion within the secretariat, but, needless to say, we like to broaden that discussion.

PROFESSOR FOX: There were just two questions of fact I wanted to look at very briefly, Ian.

THE CHAIRMAN: Yes.

PROFESSOR FOX: On page 19 dealing with the proposed federal courts, it implies it is an additional court. I think that is not true, is it? Is it not a replacement for the Exchequer Court?

PROFESSOR LEDERMAN: The Exchequer Court is itself an additional court under the words of Section 101 of the B.N.A. Act. I think that is the sense in which it is used.

PROFESSOR FOX: On page 21 at the bottom it says:

"The present provision guaranteeing the
"independence of Superior Court judges
"should be continued and extended to
"include all judges ... "

Would that not include persons who were formerly called magistrates and, if so, you would be changing the conditions under which those former magistrates were appointed. Those persons who are now called provincial judges and who were magistrates, are not given the same protection in the matter is dismissal as Superior Court and Supreme Court judges -- correct? They can be dismissed, can they not, more readily?

PROFESSOR LEDERMAN: There has to be an inquiry.

MR. CALLAGHAN: There has to be an inquiry under the Provincial Courts Act.

PROFESSOR FOX: Yes, but you do not need Joint Address.

MR. CALLAGHAN: No. I assume this is

drafted with reference to District, County and Supreme Court judges. There is nothing here, I think, that would affect magistrates. They are already covered.

PROFESSOR FOX: Except they are called judges now, are they not?

MR. CALLAGHAN: Yes.

PROFESSOR FOX: So if you say "all judges" would that not imply they were included? Do you see my point?

MR. CALLAGHAN: Yes, it would.

PROFESSOR FOX: Therefore we should not use the term "all judges".

PROFESSOR LEDERMAN: Well, I would just as soon it included them. They try 90 per cent of the criminal cases in Ontario.

PROFESSOR FOX: All right, perhaps we should discuss that, then.

MR. POSEN: I think it is the question: Should they be protected this way?

MR. CALLAGHAN: What is their tenure? -- "During good behaviour". Now they can only be removed -- they are removed by the Lieutenant Governor in Council but after they have had an inquiry and a report from a judicial inquiry.

MR. POSEN: This does not change the rules; it only makes it more difficult. There would have to be an address to the Legislature. What it does do is set up a nominating commission

to put out names for magistrates or provincial judges as they are now called.

PROFESSOR LEDERMAN: There is already a nominating commission functioning for that purpose.

MR. POSEN: Right.

MR. CALLAGHAN: It is funny how your mind works, but throughout this whole thing I had never considered the implications this would have on provincial court judges. I am always looking at it from the point of view of Section 96 judges.

It might not be a bad idea, if the Lieutenant Governor in Council is going to have the power of appointment of provincial judges operating in provincial courts, that they should be included in this and given the same tenure of office, although I am not sure you want ---

MR. POSEN: Frank, would you note that?

PROFESSOR FOX: I have noted it on mine, Gary, if you want that.

MR. POSEN: I just want a comment from the Department of Justice.

PROFESSOR LEDERMAN: Before we leave the paper on the judiciary, I have a couple of other points that I would like to raise. On page 14 the word "civil" is being used in two senses, and it is the old problem of civil law or French code law, and I think it is confusing and ought to be re-worded.

MR. GREATHED: Where were you?

PROFESSOR LEDERMAN: Page 14 and 15.

MR. GREATHED: All right.

PROFESSOR FOX: Line 2, I guess you mean, Bill?

PROFESSOR LEDERMAN: It implies an identity between civil law and civil code law that does not exist. Bills of exchange, for instance, are federal law. Not all civil law, that is, not all non-criminal law, is within provincial jurisdiction. A great deal of it is within federal jurisdiction.

MR. POSEN: That is why the recommendation is limited to civil code matters.

PROFESSOR LEDERMAN: But the word "civil" is used in the sense of non-criminal. It is also used in reference to the system of law derived from Rome, and those two different senses of the word, to the reader who does not know that distinction, are just going to be confusing. I do not think the writer is confused, but I think the reader is going to be.

MR. GREATHED: Right.

PROFESSOR LEDERMAN: Is the idea of the province appointing Superior, District or County Court judges going through the committee without comment?

MR. GREATHED: What page is this?

PROFESSOR FOX: 20.

MR. POSEN: If I might say so, Dr.

Forsey had a comment.

PROFESSOR LEDERMAN: "The constitution
"should give the Lieutenant Governor in
"Council the power to appoint the
"judges of courts within the province"
and the judicial nominating commission is
contemplated. We are not now talking about the
Supreme Court of Canada but about the Superior,
District and County Courts. This is a very
important proposition and a very great change from
the way we now do things.

We have a system of courts now where the
provincial court judges are appointed by the
province (but used to be called magistrates);
Superior, District and County Court judges by the
federal authorities, and the Supreme Court of
Canada judges by the federal authorities, though
there is no appointment to be made to Superior,
District or County judge posts unless provincial
legislation has established that post. This
means that the Superior and County Court judges
would become provincial rather than federal
appointees.

I wonder what the rationale of this is,
because the Court system is on the whole unified
and is trying cases arising under federal or
provincial law indifferently. The provincial
government could say: "These Courts are deciding
the meaning of some of our laws. Why should not

the judges be provincial appointees?" But the federal boys can say the same thing, that they are deciding points under federal laws, and therefore why should not they be federal appointees?

If you really want to pursue the logic of that to its final conclusion, have your one nominating commission put up the list and alternate the appointments -- every other appointment, Lieutenant Governor in Council; every other appointment, Governor General in Council.

MR. CALLAGHAN: Aside from the political implications, which I think are very appealing to provincial politicians, there is one rationale which I think is extremely important to any province which has certain responsibilities given to it under the B.N.A. Act. That is simply this. The way the Courts have continued to interpret the appointing power of the federal government is that Section 96 is a little more than an appointing power: it confers jurisdiction on Parliament that transcends just the pure appointment. If a province wants to reconstruct its Court system, or if it wants to establish a series of tribunals to deal with particular problems, the question then becomes: Are you transferring from a Superior Court judge appointed by the federal government, a jurisdiction which is inherently his? If you are, the province cannot establish a board for the disposition of what is basically a social

problem, without getting the federal government to make an appointment. Of course, this came up initially when they established labour relations boards.

I think surely, if the province is going to have the obligation to administer justice in a province, it should then have the right to structure particular aspects of it, both administrative and judicial, as it sees fit; and it should not be hamstrung by some jurisdiction which they are only going to find out exists after they have established a board and somebody comes along and say: "You should have been appointed by the federal government." It has really been the expansion of the appointing power which the Courts have done, expanding this appointing power to a position where it is now basically a legislative power. It is a power which confers some intangible legislative jurisdiction on the federal Parliament.

Of course, there are many cases where they have done this -- Mining Commissioner, labour relations boards, Masters exercising jurisdiction in mechanics' liens, all these cases; and it is just impractical and illogical.

Secondly, I think, in any federal system -- certainly in the States the superior court judges are all appointed by the state jurisdiction. I see more logic for having it done by the lower

order of government than the higher order; and I think these are points which do not have any relation to the political expediency of it.

I think the Section 96 argument is the big thing. If you can define a power of appointment which will not confer some fundamental legislative jurisdiction on the federal government, then maybe the appointing power should be in the federal authority, but I really do not see any reason why it should anyway -- why should they have it? Are they more capable of making better appointments than the provinces? Certainly if you are going to have a nominating commission they are not.

PROFESSOR FOX: I can think of an additional argument that would bolster your case, too. On occasions provinces have wanted to have another Court added to an existing Court, and the federal government, for whatever reason, would not appoint a judge. Therefore although the Courts are charged under the constitution with providing the structure of such Courts, the building, staff and so on, they could not get the judge appointed.

If I recall correctly, there was a case in Prince Edward Island where Prince Edward Island waited twenty-two years to get an additional judge appointed by the federal government to whatever the provincial Superior Court is called there. At least in that case, the successive

governments in Prince Edward Island felt they were hard done by.

PROFESSOR LEDERMAN: They have always appointed as many judges as they needed. I am afraid as far as the Section 96 point is concerned, it is too technical an argument for us this afternoon, but I am afraid I am on the other side of the fence there, frankly. If that is the thing you are worried about, you do not have to cure it by this method, which is "a steam hammer to drive a tack"; but if we are going to maintain the same system of courts and not go to the American system or two separate systems of courts, then, as I say, the logic is to alternate the provincial and federal appointments, not all one or all the other.

As a matter of fact, there is, as I say, an important division now, in that the provinces appointing the provincial criminal court judges who try 90 per cent of the criminal cases in the country under the federal criminal law, the Criminal Code, so I think there is a lot more to be looked at in this.

PROFESSOR McIVOR: You are still confident, Ed, you can detect the threads of consensus in this?

MR. CALLAGHAN: I don't think there is one, either.

MR. GREATHED: Well, the point is being debated. There is a fundamental difference of opinion.

PROFESSOR CREIGHTON: You can add my voice to the opponents of it, Mr. Chairman.

MR. GREATHED: I think Dr. Forsey essentially made the same point.

MR. CALLAGHAN: If this is wrong, what is the argument for maintaining the power of appointment in the federal government? I would like to hear that argument.

PROFESSOR LEDERMAN: The argument is that these Courts are trying cases under federal law as well as under provincial law.

MR. CALLAGHAN: Why does that mean they should be federal appointees? It makes it one or the other. I am asking not for your argument as to alternate appointments, but the argument in support of the federal appointing power.

PROFESSOR LEDERMAN: If you are going to have one system of Courts trying most of the issues in the country, whether they are right under federal or provincial laws, the real reason for one system of Courts for this purpose is that in case after the case you have got a package of points, some federal and some provincial. If there is virtue in the one system of Courts, then either you take some of those Courts and let the provinces appoint the judges, and others let the federal authorities appoint the judges, or you alternate all along the line. Somebody has to appoint judges to the single system of Courts, so you have to say it is

either Ottawa or Toronto.

MR. CALLAGHAN: You do not really think there is any reason for one over the other; your logic is the ultimate appointment as opposed to saying ---

PROFESSOR LEDERMAN: My logic leads me to either a dividing up of the power of appointment, either the way we have it now or the federal authority to say: "It is our Criminal Code and we will take what your judges say about it; on the other hand, it is your Real Property Act and you will see what our Superior Court judges say about land titles." You can have that kind of division of appointing power, or you can have alternate appointments all the way through. On the logic of a single system of Courts in a federal system, pursued to what it means for appointment, that does not mean that the provinces appoint all the judges or that the federal authorities appoint all the judges. It means each appoints some of the judges; you have some kind of system where each appoints some.

Now, you are going to Ottawa in the position of saying: "The provinces should have some voice in who sits on the Supreme Court of Canada, because the Supreme Court of Canada is the final court of appeal on provincial laws and on provincial powers and all kinds of things." It is also the final court of appeal on federal laws and federal

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either Ottawa or Toronto.

powers. The sharing argument which applies to the appointments to the Supreme Court of Canada, which you are going to promote in this paper, applies logically throughout the whole bit.

MR. POSEN: Of course, on the Supreme Court of Canada the provincial participation is in the nominating commission; with regard to the provincial Superior Courts the federal participation is also in the nominating commission.

PROFESSOR LEDERMAN: Yes, it is the same nominating commission.

MR. CALLAGHAN: And the appointment in the Supreme Court of Canada and the nominating commission is done by the Governor General in Council.

PROFESSOR LEDERMAN: And the actual appointing in the other case would be the Lieutenant-Governor.

MR. CALLAGHAN: And the nominating commissions are made up of representations of both, so it is really not as far off as you might imagine.

PROFESSOR LEDERMAN: I think the nominating commission makes the alternating idea pretty easy. You would have to be specific about who did the Chief Justice.

MR. CALLAGHAN: The other point is that I am not satisfied that the federal government are acting from the position of a single, unitary

system of courts. Bill 192, as you have in Federal Courts, is a recent example of the federal government extracting from a provincial Superior Court jurisdiction and handing it over to a Federal Court.

The logical progression from that would be a Federal Court system, and they have taken all jurisdiction and administrative law from the provincial Superior Court and transferred it over to the new Federal Court jurisdiction that was exercised by the Supreme Court of Ontario over federal boards and agencies, which has now been removed and put in the Federal Courts. So I am not so sure that a Federal Court system is not coming.

PROFESSOR LEDERMAN: I agree with you the federal government may be undercutting the argument I am making with their new Bill C192. I am not so worried about their having a reconstructed Exchequer Court now being called the Federal Court (since the word "Dominion" is out of fashion); I am not so worried about that getting the supervisory jurisdiction over federal administrative tribunals. The provincial administrative tribunals are still under the provincial courts, but they have got bills and notes in here, did you notice?

MR. CALLAGHAN: They have got everything. I think it is an indication maybe the Federal Court system is in the offing.

PROFESSOR LEDERMAN: With bills and notes, the whole promissory note system, you cut into all kinds of civil rights issues with a knife. I wonder what they are up to. They are certainly cutting their own throats with this kind of thing. They are undercutting my argument. It is hard to make the argument I am making, I agree, in the face of Bill C192.

ACTING CHAIRMAN (Prof. McIvor): As the Chairman indicated, gentlemen, he did not want to cut off this discussion unduly, and I am not sure it can be said that we would do that. When he left he intimated great hopes that on his return we would be discussing the next topic, which relates to proposals on the Senate of Canada, and I would suggest we might move along to that, but before inviting your views on specific sections of that document I think Mr. Greathed would like to make a few short background observations.

MR. GREATHED: Thank you, Mr. Chairman. I just have really three points I would like to make. First, the point which I made when I sent this paper out to members of the Advisory Committee, namely that this particular draft is in a much earlier state of discussion; it has not been as advanced, it has not received the same kind of scrutiny, either by this Committee or within the government, as the paper on the judiciary has. Therefore, as I say, it is an earlier stage of

preparation.

I would make in my second point just the observation that I would ask you to bear in mind the discussions that this Advisory Committee has had on the Senate over the last few years, and perhaps not discussions of a particular character but more of a general character. They include observations made to this Committee by Mr. Robarts on a couple of occasions, and they include, of course, observations made by various members of this Committee and papers and shorter papers and discussions during the course of our debate over the last few years.

The stage we have reached now, of course, (and this is really my third point) is that we have a committee of ministers on the Senate. They will, I presume, be meeting again in the not too distant future; at which time, as part of its contribution to the review process, Ontario will be expected, I think, to submit views on the Senate in a way that we have not done extensively except for a few propositions.

Some of the contents of the paper you have before you now certainly reflect the rather intensive discussions that have gone on in the Continuing Committee of Officials, of Canadian Ministers on the Senate, and indeed in the general debate that has gone on since the Continuing Committee began its work, since the Constitutional

Conference began its work.

Of course, this paper is also written with the knowledge of the rather extensive proposal that was put forward on the Senate by the Government of Canada.

With those remarks, Mr. Chairman, just to sort of set the stage for this, I would invite comments from the members of this Committee on this particular paper and indeed we would welcome any and all.

PROFESSOR FOX: Mr. Chairman, I would like to raise a question about the sentence appearing in the middle of page 2, which says:

"A century of experience has demonstrated
"that the need for such an institution
"has not declined as the provinces and
"population of Canada have increased"

MR. STEVENSON: I think the "not" in front of "demonstrated" must be put in.

PROFESSOR FOX: That would make it more acceptable.

There are really two points. First of all, one could raise the question, of course, whether we need the Senate at all, but I imagine your group has moved beyond that point, so perhaps we do not need to discuss it. Then I would feel that this sentence still is a sort of non-sequitur, in view of what has preceded it and what follows it. The need for such an institution originally surely

was not related to the size of population or the number of provinces. You see my point? I just do not think it makes a great deal of sense the way it is expressed there. Why not state what the original reasons were for the creation of the Senate, and then if you want to say those need still continue, all right.

ACTING CHAIRMAN (Prof. McIvor): Leave out any reference to provinces and population.

PROFESSOR FOX: I am just suggesting it be rewritten, really, unless there is some hidden meaning here I do not catch.

MR. GREATHED: No.

PROFESSOR FOX: A question about page 4 under "Recommendation" and this just for information. Is Canada the only federation only whose constitution the power to appoint senators rests exclusively in the federal government?

MR. GREATHED: To the best of our knowledge. A lot of this paper, incidentally, reflects a good deal of the rather lengthy study by Ron Watts of Queen's. That study, of course, will be published in the next volume of the O.A.C.C. papers.

PROFESSOR FOX: That was certainly an excellent study. I enjoyed this paper and I do not want any comments I make to seem unduly critical. I thought it was imaginative and had new ideas that I had not seen expressed.

PROFESSOR BRADY: Its basic idea is that the Senate should no longer be nominated by the federal government, but that the senators should be nominated by the provincial governments, presumably to conform much more with the sort of pattern with federal second chambers.

In general, I think I would agree, although I would like to modify this federal notion. I think I would have the national government also nominate some members. I am thinking of the fact that the calibre of quite a number of the members of the present Senate, or the Senate as it exists, has been pretty good. I know the dim reputation the Senate has as the chamber of retired and worn-out politicians or wealthy contributors to campaign funds; but actually there is a group of senators there who have considerable ability, even if they are sometimes over seventy, and considerable experience, and they do good work on committees of investigation. They express some views that may not have much influence on public opinion, but nevertheless they are expressed and they are views worthy of expression.

I would not like to see, as it were, all of these people removed from the present Senate, to be replaced by nominees of provincial governments. Provincial governments may nominate some wise men too; I do not know, it is untried yet.

I would like to retain, in other words,

a little of the older system along with the brand new federally devised and federally oriented second chamber. That is my suggestion, for what it may be worth.

MR. CREIGHTON: In other words, more of what was actually recommended in the original federal White Paper?

PROFESSOR LEDERMAN: It proposed some provincial appointments.

PROFESSOR CREIGHTON: It does not say how many, what proportion.

PROFESSOR FOX: There is one omission here from the present arrangements available for the Senate; that is, there is no reference to the deadlock provision that exists at the moment for the appointment of six senators. Whether that was intentional or not, I do not know.

MR. GREATHED: Would you like to comment on that, Judy?

MRS. WILENSKY: I am sorry, I did not catch that.

PROFESSOR CREIGHTON: Relates to the deadlock and the possibility of appointing an additional four or eight senators.

MRS. WILENSKY: It depends on the power. In other words, in the case of the present Senate, you have to be able to break a deadlock on a piece of legislation, and the power of absolute veto is taken away from them. The need to appoint extra

senators to break a deadlock no longer exists to that extent.

PROFESSOR FOX: Perhaps that might be mentioned somewhere and explained.

MR. GREATHED: Yes, I had not remembered that that point had come up in our discussions.

PROFESSOR LEDERMAN: A deadlock can be resolved by the Rules of Procedure of the Senate. If the voting is even, the motion is lost. I have forgotten what the Rules are.

MRS. WILENSKY: That was the suggestion within the classification where, if the vote was even, it was decided ---

PROFESSOR FOX: Do we want to play the numbers game and discuss numbers?

MR. GREATHED: I would be delighted if you play the numbers game. I think you will find it is not very rewarding.

PROFESSOR FOX: Page 8 is the recommendation. One can say so many things about different proportions of numbers, but let me make one comment and maybe other people would like to add a comment.

PROFESSOR MEISEL: With respect to the numbers game, why don't you turn to page 10, which is the same language but more of it.

--- Short recess.

THE CHAIRMAN: Can we resume on the

reconstruction of the Senate? Had we been going through this in any order or just taking comments as they occur?

PROFESSOR McIVOR: No, we were at page 10.

PROFESSOR CREIGHTON: It is worth noting, Mr. Chairman, that in respect of division II on page 4, the recommendation that senators should be appointed by the governments of the provinces for a term of six years, the Province of Ontario has (I think this is correct) seen fit to disregard the recommendation of this committee made, I think, on several occasions over the years, with respect to the composition of the Senate for appointment. We never even contemplated, I think, the idea of all senators being appointed by the governments of the provinces.

PROFESSOR FOX: I am dubious that you would ever convince the federal government to agree anyway.

PROFESSOR CREIGHTON: We are not talking about the federal government; we are talking about this Committee.

MR. GREATHED: I do not think it was so much a matter, Professor Creighton, of disregarding what the Committee had said as that when we had listened over several years to a variety of comments and led quite a bit of material on the Senate, also listened to discussions within the committee of ministers on the Senate and the

Continuing Committee of Officials: there came a point where we had to put something down on paper which seemed to take into account, imperfectly perhaps, as many different points of view as possible. I suppose you could come up with very many different schemes and many different alternatives. We chose this one for discussion by the Committee, and I think it was really a kind of arbitrary decision as to how you could come up with a fairly uniform presentation which at the same time tried to take into account the various points of view -- not all of them, but as many as we could see that had been put forward.

PROFESSOR CREIGHTON: But in this particular recommendation too, there is no attempt to compromise between different points of view. You simply plump for one method of appointment.

PROFESSOR LEDERMAN: I am opposed to a provincially appointed Senate. If I have not said so before, I say so now.

PROFESSOR MEISEL: I like it.

PROFESSOR FOX: All of them? Would you appoint all of them?

PROFESSOR MEISEL: I think the point Alec Brady made certainly should be taken very, very seriously. I do not know what the proportion is. It seems to me that in a way, from the point of view of the federal government, it is worse to have too small a proportion than none at all; although

I think the point that was made is valid, that there should be a federal presence in the Senate, both to make it possible for the spokesman who have that point of view to be active and effective in the Senate; also, to maintain that very useful place to which you can send some politicians who may have to be removed for one reason or another from active politics, say, in the House of Commons or in the Cabinet.

PROFESSOR LEDERMAN: When I said I was opposed to provincial appointments, I was opposed to the proposition here that all senators ---

PROFESSOR MEISEL: I am sorry. I thought you meant any.

PROFESSOR LEDERMAN: I favoured abolition of the Senate, but if there is going to be a Senate, then an appointed Senate with these restricted powers, I think the power of appointment should be shared, and the question becomes how you divide up.

PROFESSOR CONWAY: Not that it does too much, why do you favour the abolition of the Senate?

PROFESSOR LEDERMAN: I do not think it has much to contribute. I think Parliament, plus the federal-provincial conference and provincial legislatures can run the country.

PROFESSOR FOX: Mind you, the suggestion is that the powers of the Senate be considerably reduced from those that now exist constitutionally

at any rate; so I suppose you could argue that within the total Parliament this would be the provincial House, and it might therefore be argued that it should be representative of all the provinces rather than the federal government. I don't know, I think we ought to talk about the powers in a moment, but maybe one should mention that in conjunction with the appointment.

PROFESSOR BRADY: One might argue, however, Paul, that it would not be inappropriate to have some people present who are nominated by the federal government and, presumably, would be interested in looking at some of the questions debated from the federal government's point of view. The plan here certainly is admittedly the traditional federal institution. You think of it as a House of Commons, and the plan here certainly is admittedly the traditional federal institution. Either the members are elected by the electorates in given states or, let us say in the case of Switzerland, Germany, and so on, represent the governments -- in Germany, of course, in a very special sense that you cannot reproduce and which I do not think it is desirable to try to reproduce because our history and so on is entirely different.

I do not think you need to follow any one pattern. I think that given my suggestion of combining some federal representatives and provincial representatives, a second chamber that

could be effective might very well emerge from this amalgum.

You cannot tell what a second chamber is going to do anyway, how good it will be or how poor it will be. That, I think, the present constitution seems to demonstrate. You are embarking on an experiment in any case, and I do not think you are increasing the perils greatly by trying to combine the federal nominees and the provincial nominees.

PROFESSOR MEISEL: In any event, you would have to have some spokesman who would pilot government business or at least would speak on behalf of the federal government. Would they be taken from the Prince Edward Island delegation? You have to give them some kind of status in the chamber.

PROFESSOR FOX: Of course, the arrangement that has prevailed for some years is that the Senate has invited federal ministers to come up and appear if they wish to present their legislation. It is an opportunity that has not often been taken advantage of, but it has been provided. You are thinking of the traditional method of having the government leader in the Senate and so on.

The problem there, judging by the two books written on the Senate, Kuntz and McKay, is that the government leader of the Senate has often been so badly informed that he has not been much of a leader at all, but that is another problem.

PROFESSOR MEISEL: Also, there may be

no effectual government. Of course, this can happen in our Senate anyway -- a Conservative government is elected, and so forth.

PROFESSOR LEDERMAN: These appointees would represent governments too, at least in the first six years, because they would be looking for re-appointment for the second six years.

THE CHAIRMAN: Has the government leader of the Senate always been a member of the Cabinet, do you know?

PROFESSOR FOX: No.

THE CHAIRMAN: That is fairly recent then?

PROFESSOR FOX: No, Diefenbaker left Haig's successor out, Asseltine, he left him out of the government but that was considered to be most unusual.

THE CHAIRMAN: Why is it they felt they were badly informed?

PROFESSOR FOX: Because there was a breakdown of communication. They might have attended Cabinet meetings, but they were not given an order of business by the functioning side, so that there were occasions when the bills would be presented in the Senate and members would rise and ask "Why are we considering this now?" and the government leader would say "I don't know." "What is the intention of the government?" "I don't know". This happened even when there was a massive

majority of the same party complexion in both Houses.

MR. GREATHED: There was even a suggestion that when the federal government presented its proposals on the Senate and the Constitutional Conference, there was a breakdown of communication between the government and the Senate.

PROFESSOR FOX: I can well understand that.

MR. POSEN: The government leader in the Senate, of course, had to play the role of the whole Cabinet. He had to switch hats and put on the hat of a different ministry any time a bill came up. Of course, there was no possible way he could have the expertise to be able to do so.

PROFESSOR CREIGHTON: All the more reason for the total abolition of the Senate.

MR. GREATHED: That was in our proposition, of course.

MR. POSEN: Unless we could reform it.

MR. GREATHED: But we were prevailed upon, in the chemistry that goes into this sort of thing, that perhaps this was not a suggestion that realistically we could put before the Constitutional Conference. It is certainly an alternative.

PROFESSOR BRADY: I do not think the abolition of the Senate would be accepted by a number of provinces in this country. I think it is

impracticable.

PROFESSOR CREIGHTON: They just like the thought of it being there.

PROFESSOR BRADY: And they like the representation.

PROFESSOR MEISEL: Some of the role assigned to the Senate here strikes me as being potentially very useful. Is it thought then that the Senate, as roughly as projected here, could not perform this function of examining those areas which are of interest to the provinces? It seems to me this is a potentially very rich possibility for Canada. As the federal system is changing, this is one adjustment of institution we can make. If it were a question of preserving the present Senate, I fully agree, let us get rid of it, because it is not really very useful, but this is a very different kind of animal.

PROFESSOR CREIGHTON: How are you going to define what legislation substantially affects provincial interests?

PROFESSOR MEISEL: Are you on page 12?

PROFESSOR CREIGHTON: Page 11 at the moment.

PROFESSOR MEISEL: On page 13 at the top you will find the procedure.

PROFESSOR LEDERMAN: The classification. Does this mean that all legislation must be introduced in the first instance in the House of

Commons?

MR. POSEN: Yes.

MR. GREATHED: Yes.

PROFESSOR LEDERMAN: You cannot introduce anything for the first time in the Senate?

PROFESSOR FOX: Incidentally, there is a small point on that. May I intervene, Bill? Private bills may be introduced in the Senate now. Was it your desire to exclude them too under your new arrangement?

MR. GREATHED: The new arrangement was pretty sweeping. That might have to be looked at.

PROFESSOR LEDERMAN: Pretty useful device to be able to slip a private bill into the Senate.

PROFESSOR FOX: Yes, I think if you just put in the clause, "except for private bills".

MR. GREATHED: I think what we are proposing, as John Meisel has said, is really such a different animal that it may be that we can graft on some of the portions of the old and come up with an interesting hybrid. I think that would have to be looked at sort of individually, proposition by proposition. I would not really like to comment off the top of my head as to whether this suggestion is good or not.

I was thinking of Professor Creighton's comment, and I think here the only answer is that the committee would make that decision.

PROFESSOR CREIGHTON: I know, but you have to make it on some kind of basis. You have just an arbitrary vote as it is here on page 13.

MR. GREATHED: I presume what they would do is they would consider what was the substance and intent of the piece of legislation in front of them, and then, through their experience and knowledge and what-have-you, would declare it either substantially affecting provincial interests or not.

PROFESSOR CREIGHTON: I should expect, with a fair degree of confidence, that almost everything would be declared substantially affecting provincial interests.

PROFESSOR LEDERMAN: Including the budget? What about financial legislation?

PROFESSOR CREIGHTON: You would be stymied from the beginning.

PROFESSOR BRADY: It would be an exceedingly overworked committee. It may be the only practical way of coping with the question, but one can see that there would be some difficulties about its work. I do not know whether it would be insuperable, but we may as well admit it is not going to be a simple device.

PROFESSOR LEDERMAN: Wouldn't you have to have the rule that they have with respect to the Parliament Act limitations on the power of the House of Lords, that if it is a money bill and so

certified by the Speaker of the House of Commons, it does not go to the Lords at all? If this suspensive veto works on money bills which will be classified every time as affecting provincial interests ---

PROFESSOR BRADY: It may be simpler to determine whether a bill is a money bill than whether it affects provincial interests.

PROFESSOR LEDERMAN: Yes.

PROFESSOR CREIGHTON: In other words, whether it is going to be held in Ottawa.

PROFESSOR LEDERMAN: But you are into the whole spending power thing, that is what the provinces are complaining about.

PROFESSOR FOX: Yes, that is a good point, Bill, because all your estimates and budgets could be suspended.

MR. POSEN: One can look at this in the most critical light or worst expectations. One can almost imagine a situation where within a year they would work out a set of ground rules on how to classify legislation. They would go into it cold, but I imagine they could take something like the Canada Water Bill and say: "Yes, there are provincial implications." They could take something else like the Weights and Measures Act and say: "This has no effect"; or take something regarding northern development or territorial courts in the Northwest Territories and say: "This Act has no --- "

PROFESSOR LEDERMAN: But, you see, you are talking about the basic powers of a chamber of Parliament. As Professor Creighton has been pointing out, it is going to depend on the toss of a coin, on the vote of, what, six senators, and it is not clear whether the chairman has both a deliberative vote and a casting vote. That sort of thing could be solved, but how could something so basic as the definition of the powers of the Senate on any terms be left to the chances of tossing a coin in committee?

MR. POSEN: The power being just a power to veto something for three months or one year. Of course, reading the rest of the powers, it certainly requires one heavy negative vote ---

PROFESSOR LEDERMAN: If you were a federal civil servant and the federal budget were needed for one year, you would get your choice.

MR. POSEN: It is the money bills, I am agreeing with you, would be the difficulty there, but let us take something like the Canada Water Act which the classification of the committee of the Senate would declare substantially affecting provincial interests. It now goes back to the House of Commons, receives Third Reading, and goes back to the Senate for consideration substantively there. Our proposal is that if two-thirds of the senators vote against the bill, it is then vetoed for one year.

PROFESSOR LEDERMAN: In other words, one-third of the senators can pass it.

MR. POSEN: All right, in other words what we are saying is that the provincial opposition, or the regional opposition, must be so overwhelming that senators from many parts of Canada would declare that the bill is unacceptable as it is.

MRS. WILENSKY: There is another concern about money bills. Take something like the Medicare legislation. Would that be classed as a money bill in the same way as the budget or appropriations would be? That is the kind of bill that is really the guts of the problem.

PROFESSOR LEDERMAN: Federal Medicare legislation would be certainly classed as a money bill.

PROFESSOR McIVOR: Sure.

MRS. WILENSKY: In which case, do we want to say then that no money bills shall come up to the Senate, because in that case we would be saying that something as important as a shared cost program, which vitally interests a province with 50 per cent of the outlay, would not go to the Senate. There is a distinction between that and the budget, and the question you are raising is: "Can you actually, validly, make it legislation?"

PROFESSOR LEDERMAN: Equalization payments to the provinces are in the budget.

PROFESSOR CONWAY: I wonder if someone

would enlighten me as to why there is a need for the Senate anyway? How many countries in the west have uni-cameral legislatures?

MR. POSEN: Federal countries?

PROFESSOR CONWAY: Yes.

PROFESSOR FOX: I cannot think of any.

MR. GREATHED: Cannot think of any federal.

PROFESSOR CONWAY: I am a little puzzled by the discussion. There does seem to be no need for a Senate. We have got along very well with a moribund one for a very long time. Why reactivate it? What is the political theory of a two chamber legislature and its desirability, as against a one chamber legislature which, in effect, we have had for some years? I think that is where we have got to start.

PROFESSOR BRADY: I do not think we have a one chamber legislature; we have two chambers. You may minimize the significance of the work done ^{it} by the Senate, but/does a job; and it has a political significance certainly that here you have certain regions, certain provinces, pretty strongly represented in the national Parliament. The senators from these provinces are perhaps not so valiant as outspoken champions of their provinces, as it was thought they would be, but they do express views with respect to their regions, and their regions or provinces are very attached to

what representation they have in the Senate. You talk to Maritimers about diminishing the number of senators in the Senate of Canada, and you will get a very prompt reaction.

PROFESSOR CONWAY: I am sure, yes, but do these views have any power in the actual legislative process, or is it just a sounding board?

PROFESSOR BRADY: These are political facts, surely, and, as facts, part of the political system. You cannot write off the second Chamber as valueless by ignoring those facts.

PROFESSOR CONWAY: What I am really trying to get at is what is the precise value of the Senate. It is certainly not what the British North America Act said it was going to be.

PROFESSOR MEISEL: The Senate played a very important role in making the original agreement acceptable because it acted as a guarantee for some people who otherwise would have had grave doubts, and did have grave doubts, about becoming part of the country.

It may be used in exactly the same way now. It may be used in two ways. It may become a guarantee to some people who feel that the provincial viewpoint could be put more effectively if there were this body in Ottawa.

PROFESSOR CONWAY: I see.

PROFESSOR MEISEL: That is only one side.

The other side of it is that it presumably could act as yet another agency which would permit negotiations of the decision-making process to take place with both (if you will) national perspectives being taken into account as well as the regional perspectives. So that it could become one of the things, like the meeting of the first ministers, like the Continuing Committee, and so on, where federal and provincial viewpoints could be discussed and taken into account.

PROFESSOR CONWAY: Professor Lederman, you would not agree with that?

PROFESSOR LEDERMAN: I am afraid I agree with what I think is Dr. Forsey's position. I mean, either I agree with Mr. Nixon, the Liberal leader in Ontario, that the best thing to do is to abolish it; or, if you are not going to do that, I would go to Dr. Forsey's position, where he would not abolish it but he would not change it very much because it does some useful work as a revising chamber for federal legislation; and, being an appointed Chamber, it has never attempted to assert these theoretical equal powers which it has.

PROFESSOR CREIGHTON: Sometimes it has asserted them.

PROFESSOR LEDERMAN: It has occasionally asserted them. It is too bad Dr. Forsey is not here, because this has been one of his great studies.

PROFESSOR BRADY: It has revised certain legislation very, very considerably. It much more readily develops challenges, of course, by using the veto; but as to revision of legislation, numerous acts have been greatly improved in their passage through the Senate by revision.

PROFESSOR LEDERMAN: But this is a purely federal function, approving federal legislation, and does not have much to do with federal-provincial relations.

PROFESSOR BRADY: It can have. Sometimes the improvements rest really upon clauses that affect provincial or regional interests, not the interests of governments, necessarily, but of people in a given region.

PROFESSOR CONWAY: I find it difficult to reconcile with what Paul was saying about the lamentable performance of the majority leader in the Senate who did not know what the bill was and had not been informed.

PROFESSOR FOX: This has been despite the lack of regard that successive governments have tended to show to the Senate. I think it is fair to state, on the basis of the evidence, that generally governments have not concerned themselves about what the Senate thinks about a bill until the Senate creates difficulties for them and then maybe it has concerned itself; but I would agree entirely with what has been said by Dr.

Brady, Professor Creighton and others, that the Senate has performed a very useful function on many occasions. We have not mentioned, in the catalogue of things it has done, the very valuable committee work it has done on a number of occasions -- on topics which, incidentally, the House of Commons would not have concerned itself with, probably because there were not many votes attached to it. I am thinking of Reid's committee many years ago now on drug addiction, which conducted a national inquiry. I am thinking of the Senate Committee on Manpower a few years ago which hired Deutsch to conduct technical surveys and led to much of our concern now with the level of education and improvement of employment by retraining programs. This came out of the Senate committee. There was the Senate Committee on Human Rights, which was a joint committee after the second world war; the Senate Committee on Land Use.

PROFESSOR BRADY: St. Lawrence Waterways.

PROFESSOR FOX: Yes. These are not reports which have received great public plaudit, because the public (like the government) and the media too (like the government) ignore the Senate.

PROFESSOR CONWAY: What we are trying to do then is to make the constitutional position of the Senate accord with its reality today, its contribution?

PROFESSOR FOX: I would hope the object

of any reform would be to make it more useful. Then the question becomes: How do you make it more useful? This seems, to my mind, to break down into two discussions: one, about membership and method of appointment, and the other about powers. Generally you can separate these two aspects and discuss them.

I am not sure that I entirely agree with the position in this paper about the reduction in the powers of the Senate, particularly now in view of some of the difficulties we have seen in distinguishing the kinds of legislation that emerge.

Incidentally, there have been a number of disputes between the Senate and the government of the day over the subject of what is a financial bill; because the one clear limitation of the powers of the Senate at the moment are those provided in the B.N.A. Act which requires all financial legislation to be introduced in the House of Commons -- Section 53, I guess.

PROFESSOR LEDERMAN: There is no corresponding provision to that in Britain?

PROFESSOR FOX: No.

PROFESSOR LEDERMAN: That the Speaker has the last word.

PROFESSOR FOX: No. So there has been a great dispute on many occasions between the two bodies as to what is a financial bill. I could see that becoming much more relevant if we got

into distinguishing financial legislation from other legislation here, the point that was being made about what is a financial bill. This has never been satisfactorily settled. The Senate has one view as to what a financial bill is, and the successive governments have tended to take another view, and they have usually arrived at some compromise.

PROFESSOR LEDERMAN: My main point would be this, that perhaps we can improve the Senate for the function that it has been performing as a revising chamber for the federal legislation and generally for dealing with non-controversial matters, matters that are apt to be forgotten, matters that do not have immediate political mileage in them.

However, none of this is focusing on the main crunch of federal-provincial relations, and I think the main issues of federal-provincial relations under a parliamentary system have to be dealt with between the governments concerned; and it is the federal-provincial conference and not the Senate, where the main focus is going to have to be.

If you want the Senate to be the main focus of this kind of thing, then you have to accept the implications of that, forget about the parliamentary system and go over to the American system. Are they not the alternatives?

PROFESSOR BRADY: It cannot be the main focus (that was not the intention of this particular draft) with our system of government, but it can be an aid to functioning of the federal system.

One defect of the present Senate is this nomination for life or nomination now up to age seventy-five; that it tends to get a fixed political character. The senators deny, of course, that they are partisan, but they certainly have the picture of being partisan. Here you have a second chamber that is assumed to represent the various regions, and you have had a Social Credit government in Alberta for thirty-five years, but there is no Social Crediter in the Senate. British Columbia, of course, has been Social Credit since about 1952.

PROFESSOR CREIGHTON: Are there any Social Crediters really in the Legislature of Alberta?

PROFESSOR BRADY: That is another question. My point is that the Senate does not respond very markedly compared to the shifts in political opinion in the regions. That is due to the way it is constituted -- nomination by the government of the day; and while the Prime Minister might vary his appointments a little he has never done so. He seems invariably, except when he has some personal friend, to nominate members of his party, indeed to reward many members of his party for

valiant services. That is unfortunate. Again, I throw in my remark that sometimes these people he nominates are capable people and do good work in the Senate; but there is something defective about it politically, as a second chamber in a federal state, on that basis. For that reason, I think this move to get provincial representatives in the Senate -- not necessarily to fill it with provincial representatives but a move in that direction -- would at least correct in part a manifest defect in the existing second chamber. It is not a futile chamber even as constituted, but it can be improved.

PROFESSOR CONWAY: That answers my question.

PROFESSOR BRADY: As a political vehicle in a federal state.

PROFESSOR CONWAY: I can see now why it should be improved.

MR. POSEN: I imagine in conjunction with that, Dr. Brady, you would also argue that the appointment should not be for life, that it should be for a fixed period.

PROFESSOR BRADY: I would agree.

MR. POSEN: Is the six-year period, with one renewal, an acceptable period? Should it be longer or shorter?

PROFESSOR FOX: I myself would prefer, Mr. Chairman, having an appointment for a period of, say, ten years, except that a person would retire

at seventy-five or if he became seventy-five before his term was up he would have to retire, for the reason to which Bill Lederman has alluded. That is, if you allowed two of your terms; during the first six-year period the member is apt to look back over his shoulder at his government that appointed him, and therefore not to be as independent as you suggest in this paper.

MR. GREATHED: If the government is still in power.

MRS. WILENSKY: The point about the six year term is that the senator might do that. On the other hand, he would also have to look over his shoulder and make darned sure that if he were playing along with one government, that government was there; if not, he would have to be a little more non-partisan.

PROFESSOR CONWAY: When you think of the durability of some of the provincial parties these days!

PROFESSOR LEDERMAN: There would be one ten-year term?

PROFESSOR FOX: I would prefer myself one period of ten years, but non-renewable.

PROFESSOR LEDERMAN: American senators are all nine years?

PROFESSOR FOX: Six.

PROFESSOR LEDERMAN: Six every two.

PROFESSOR CREIGHTON: I should prefer no

second term.

PROFESSOR CONWAY: There seems to be one other valuable thing about the Senate, as described by you, Professor Brady, and that is that there are lots of people of great distinction in the country who have no taste for elected politics, and it is a way of getting them into the legislative process.

PROFESSOR CREIGHTON: They have never been there yet, any of them.

PROFESSOR FOX: We have accounts of people who have been asked to accept membership, distinguished Canadians, who for one reason or another -- usually private or that they do not want an interruption of their career -- who have declined.

PROFESSOR CREIGHTON: Looking at the composition of the thing over the years, anyone would decline out of mere self-respect.

PROFESSOR CONWAY: Is there any way of coping with that? It is not as disreputable as that.

MR. GREATHED: Mr. Chairman, one of the interesting things that the Committee has discussed, the idea of abolition being pretty well from most people's minds (but maybe not completely) is that the appointing power ought to be both the federal and the provincial governments. This is one of the situations we were faced with with the federal proposition on this, because this was

their suggestion, but they welched on the deal at the last minute and what they said was that some should be appointed from the federal government and some by the provincial governments.

I would be very interested in knowing, if members feel very strongly about this point that some should come from both federal and provincial governments, what kind of criteria would members take into account in trying to decide what proportion should come from the federal government and what proportion should come from the provincial governments; and would there be a clash of interests in this new Senate between those people who were appointed by the federal government and those who were appointed by the provincial governments?

THE CHAIRMAN: There is a prior point, isn't there, that it depends on the purpose you have in mind for the institution. If you want it to be a federal institution, you do some things; if you want it to be a national institution in terms of the provincial and federal governments, you go another way. "Where do you want it to go?" is the prior question.

MR. POSEN: In conjunction with that point, remember that the Senate is just one part of the Parliament and that there is the House of Commons in which the federal interest and federal government, of course, are fully represented.

PROFESSOR LEDERMAN: But you cannot

separate structure and function; in terms of the appointment, mode of the appointment, terms on which office is held, you cannot separate this from function entirely. It is the "chicken and the egg" thing.

PROFESSOR FOX: I am interested in what Ed just said, Mr. Chairman. I was not aware of that. Originally the federal government was thinking of joint appointment of every senator?

THE CHAIRMAN: Yes.

MRS. WILENSKY: Not joint appointment of every senator.

MR. GREATHED: No -- sorry; some to be appointed by the federal government and some by the provinces, but they did not specify which.

MR. POSEN: The proposition came up very fuzzy. They just used the word "some".

PROFESSOR FOX: I realize that, but I thought initially when you commenced your remarks a moment ago, you said they welched on the bargain.

MR. GREATHED: I am sorry. The term is not "welched", but they could not put a specific number on those who should be appointed by the federal government and those to be appointed by the provinces. This indeed poses an awful lot of problems, and my only point was that if it is the feeling in the Committee that this principle is desirable, then I think it could be very interesting to have your opinions as to what kind of

proportions we ought to be thinking about or what kind of criteria we should be thinking about in terms of the proportions.

PROFESSOR FOX: Well, if you start by demanding 100 per cent, you might end up with 50 per cent, which might be quite a fair distribution. I don't know. It all depends how you view this process you are engaged in. I do not know whether that was in your minds when you constructed this paper.

The normal, sort of traditional idea that has been around for years, I suggest (Harry McKay was one of the first to propose it in his book on the Senate that came out in the early 1920's, (1924), he said a third of the members might be appointed by the provinces. Incidentally, he noted that they might be appointed either by the provincial government or elected by the provincial legislature, but that idea seems to have gone by the board.

PROFESSOR LEDERMAN: He had quite a scheme of ex officio representation -- heads of national organizations -- didn't he, added on to it? It is a long time since I read it.

PROFESSOR CREIGHTON: I was just trying to remember that. I think he proposed that as another solution. I think these were divided, alternative proposals.

PROFESSOR CONWAY: Mr. St. Laurent had

some proposals, didn't he, in the late 1940's?

PROFESSOR FOX: He tried to reform it by what I suppose he thought were better people. The story is that he approached various representatives of different organizations, and they approached people like Dr. Wilder Penfield, and so on, but they all turned him down except for Mr. Hackett, who was the Conservative member from Stanstead, who accepted. Then both of them suffered from the acceptance, because St. Laurent was denounced by his own Liberal colleagues for having appointed a Tory and taking a Liberal position therefore, and the report was that he said with tears in his eyes: "Am I not to be allowed to appoint to the Senate even one man I want to?" (Laughter) It is a pretty good indication of the party compulsions.

PROFESSOR CREIGHTON: At the same time the Director of the () School of Fine Arts was appointed.

PROFESSOR CONWAY: Didn't he have some idea though about representing other interests?

PROFESSOR FOX: He tried. The story was he offered an appointment to Penfield, he offered an appointment to a Protestant clergyman, to Father Levesque, but the Church would not let Father Levesque accept and then he could not appoint the Protestant clergyman. He offered an appointment to Claude Jeaudoin who was then head of the Labour Conference, and he turned it down.

So the attempts to represent corporations fell flat.

PROFESSOR CONWAY: Are you familiar with L.S. Amery's little book called "Thoughts on the Constitution"?

PROFESSOR FOX: Yes.

PROFESSOR CONWAY: What do you think of his ideas on reform of the representation?

PROFESSOR FOX: I think they have to be put in the Canadian context to be meaningful really here. It seems to me that any discussion that involves appointing people to the Senate has to recognize that the federal government will continue to press for a certain share of appointments, and a pretty sizeable share, in order to get rid of people they do not want in other jobs, especially the Cabinet, and this will just have to be accepted.

PROFESSOR BRADY: I think, to answer Ed's question, I would reverse what McKay suggests, a third to be appointed by the province, and I would say a third by the federal government and two-thirds by the provinces.

PROFESSOR CREIGHTON: I would reverse that: two-thirds by the federal government and one-third by the province.

THE CHAIRMAN: Well, where are we?

PROFESSOR BRADY: We are in the numbers game.

MR. POSEN: I assume in conjunction with that, of course, that the absolute veto power of

the Senate would be reduced also.

PROFESSOR BRADY: Oh, yes.

PROFESSOR CONWAY: Yes.

PROFESSOR FOX: Whether or not this scheme is workable, Gary, though, I doubt.

MR. POSEN: Not this scheme particularly, but the principle that the absolute veto power would have to go as soon as there was provincial appointment.

THE CHAIRMAN: Not surprisingly, the Senate Committee has been the most sluggish of the four ministerial committees. What constraints are we under, Ed, except time?

MR. GREATHED: We are not under any immediate constraints, but after Mr. Kierans rapped Ontario over the knuckles in December for not contributing to the Constitutional Review, and after his committee really being the least, as you say, productive among the ministerial committees, I really do not know how to predict this, although the federal government did promise last October -- no, earlier than that, last summer -- that the committee would be meeting again in the early new year. Now we are just about through March, so I have no way of predicting. However, we really did not want to be in the position where a meeting was called and we were caught napping.

PROFESSOR CONWAY: Would it be in any way correct to say that the difficulty in getting

outstanding people into the Senate is that it has no real powers; it does all the useful tasks that Professor Brady was discussing, but it does not have power, and it is only a very special kind of person who wants to do that kind of thing. If you ask a man of distinction or eminence to go into politics, he wants the power to do something. I think that is the difference. I do not think the American system is at all suitable for us, but I think one of the reasons why it has been a fairly distinguished body is because it has got power.

PROFESSOR CREIGHTON: Surely it is, but we cannot have that body in the parliamentary system; it is a simple truth.

PROFESSOR LEDERMAN: Perhaps the way to approach the power of the kind of Senate we have, is simply to see what the British did to the House of Lords. The suspensive veto idea is still possible.

PROFESSOR BRADY: There is a matter that I do not think you discuss here, that very often a second chamber is given special functions, and that applies to special functions of the second chamber of the present system. The Senate of the United States, of course, is very different in special functions. Some of the other federal systems, too, have a second chamber with special functions.

I do not know what they should be, actually.

The Senate has some special functions, or did have -- divorce, for example, which has been diminished; but that may be worth looking into because it gives something of a special character to the second chamber.

There is no doubt about what you said, that a second chamber is not a chamber that would attract men of, let us say, driving political ambition and political ability into it. You cannot expect that.

PROFESSOR CONWAY: Because it does not have power. What is the exact position of the House of Lords today? What is its suspensive veto?

PROFESSOR FOX: They cannot touch financial bills at all, and they have suspensive veto of one year, isn't that correct?

PROFESSOR CONWAY: That is perfectly consistent with the parliamentary system. We would simply have a Canadian House of Senators.

PROFESSOR FOX: Is it down to six months?

MR. POSEN: I thought it was less than a year.

PROFESSOR LEDERMAN: Used to be three sessions, two years.

PROFESSOR FOX: It is now six months, is it?

PROFESSOR LEDERMAN: Down to a fraction of that now. I am not sure what the fraction is.

PROFESSOR FOX: But the important is really that they cannot touch financial legislation.

PROFESSOR CREIGHTON: Which on the word of the Speaker.

PROFESSOR LEDERMAN: The Speaker of the House of Commons, not of the House of Lords.

MR. POSEN: The independent Speaker of the House of Commons.

PROFESSOR LEDERMAN: Yes, the independent Speaker.

THE CHAIRMAN: I have been looking outside and noticing that the fog has been lifting, and perhaps that might be a good time to begin winding up the proceedings.

PROFESSOR FOX: I thought another day had dawned! (Laughter)

THE CHAIRMAN: Our proceedings, I suppose, would have been senatorial, indeed, in that case, but I raise the question about timing because we can continue to develop this paper with the suggestions and still, I think, come back at it.

The third paper, the Burns report, just went out in the mail and, I gather, not in sufficient time that you have had great opportunity, if any, to examine it. If you have, you will have noticed one distinctive and even unique contribution to change. It says on page 21 about long-term objectives:

"This Section would include articles
"stating that there should be
" (a) a conference of the Prime Minister
" of Canada and the prime ministers
" and premiers of the provinces at
" least once every day"

--- (Laughter)

That is the closed-circuit syndrome.

MR. GREATHED: I want to assure members that this is a genuine error and not a serious proposal.

MR. BEER: I am sure it is just that our secretaries would rather like to get some more of these meetings, and they thought this was the way.

THE CHAIRMAN: Again, by way of our comments on this paper, what are we asked to do?

MR. GREATHED: We could do two things, Mr. Chairman. We have one of the six Advisory Committee task forces on inter-governmental machinery. We could have a meeting of that particular group and have them report back to the next plenary session of the Advisory Committee with their comments on this paper. Alternatively, we could simply ask each member to send in his comments on the paper.

THE CHAIRMAN: If this suggestion commends itself to you, I would be inclined to do both. I would suggest that perhaps within a

certain period of time we ask all members of the committee who wish to make them, to submit comments on this; and turn the comments, in turn, over to the task force on inter-governmental relations and have them work up something for presentation to the plenary meeting.

MR. GREATHED: I might just say there is not the same kind of urgency on this particular topic.

THE CHAIRMAN: No.

MR. GREATHED: We did have a very complete report submitted to the Tax Structure Committee through the auspices of the Institute of Inter-Governmental Affairs in Queen's University, and we thought it did merit analysis. No doubt at some point in the Constitutional Review this is definitely one of the subjects which is on the calendar to be discussed, and we shall be getting around to it at some time, so we thought, again, it was wise to be prepared for the eventuality.

PROFESSOR BRADY: I would like to ask one question. On page 20 you summarize Ontario's views. You do not seem to go as far actually as Ontario went in the paper it submitted to the June 1969 conference, if I remember rightly, which recommended tax commissions, isn't that right?

MR. GREATHED: Federal-provincial tax commissions.

THE CHAIRMAN: That was a tax collecting

and administering agency.

PROFESSOR BRADY: Yes, but it is related after all, is it not?

THE CHAIRMAN: Yes.

MR. GREATHED: Do you want to comment on that paper?

MR. HOBBS: It is just an omission from our list, to be quite honest. Certainly it is in the body of the paper.

MR. GREATHED: Not in the recommendations.

THE CHAIRMAN: Thanks. I think that is an omission. Will this procedure be agreeable that I have proposed for dealing with this paper? Can we ask for the comments to be in within a month or three weeks?

MR. GREATHED: I would appreciate it very much if they could be in in the next three weeks.

THE CHAIRMAN: So within three weeks. Then we will strike a meeting of the committee.

Two administrative matters. I am asked, out of respect for the tidiness of the fiscal year, if members could submit their accounts to the secretariat by March 31st, any accounts you have outstanding up to this time, which will help to close out the bookkeeping for the fiscal year.

Secondly, I propose our regular quarterly meeting, subject to any intermediate call or any intermediate sub-committees or task forces, on

the third Friday of June, June 19th. Are there any other matters?

PROFESSOR CONWAY: There is one question I would like to ask, Mr. Chairman. I am leaving my rather capacious office at York College (I am leaving the Mastership), and I have all the papers that we have had given to us in the past five years. I would like to deposit them with the York Library, because they will be of considerable value in the future. What is the degree of confidentiality of these? Do you put a time limit?

THE CHAIRMAN: I have never pondered the question, to be honest.

PROFESSOR CONWAY: Ted McWhinney brought it up.

THE CHAIRMAN: Yes, I think he did.

MR. GREATHED: If I could offer a comment here, I think much of the material prior to the beginning of the constitutional review process -- in fact, I cannot think (I can be corrected here) of any item before the constitutional review process began, which is under any particular confidentiality; but I think that all members will recognize that since the review process has begun, we have sent members of this Committee a variety of papers which have not been published in any way, shape or form and have not seen the light of day.

I think, John, just to answer your

specific comment, I would be a little careful about some of the items in that batch. Some of them have already been released since the Constitution Review began.

PROFESSOR MEISEL: Even before that time, however, the verbatim record of the discussions here, surely, should not be released?

THE CHAIRMAN: Yes, I would separate the material into two categories. There are the blue books of proceedings here, on the one hand, and there are all the other papers which, in turn, fall into two sub-categories. One is the general material, press clippings, and what-have-you, background papers, which remain available, some of which have either been published or been made public. Secondly, there is the confidential material to which Mr. Greathed refers.

I do not know whether it would be useful to suggest that some time before you do depart that particular room, someone from the -- I don't know how much work is involved, but I am sure it is quite a stack of stuff.

PROFESSOR CONWAY: Tremendous.

THE CHAIRMAN: If some member of the secretariat could go up for an afternoon and make a sorting of the stuff there was.

PROFESSOR CONWAY: Surely the blue books, the verbatim proceedings, should not be destroyed?

PROFESSOR CREIGHTON: They should not be made public either.

PROFESSOR FOX: Or else something else will be destroyed. (Laughter)

PROFESSOR CONWAY: They are not leaving the university. They should be kept, though.

PROFESSOR FOX: There is one alternative, and that would be to get York to appoint somebody to the Mastership who is already on the Committee! --- (Laughter)

PROFESSOR CONWAY: That office has all the O.A.C.C. papers it can take now.

THE CHAIRMAN: Paul, you may have made a great contribution to the modern university searches. We have had great difficulty finding other criteria.

PROFESSOR FOX: I had another vision as we talked about the Senate -- another vision for all the members of this Committee! (Laughter)

MR. STEVENSON: I think that is a good suggestion, maybe, to have somebody from the secretariat.

PROFESSOR MEISEL: If it is in archives -- we have archives and they will ask you: "Do you want to freeze it for ten years or fifteen years?"

PROFESSOR CONWAY: That is all I am asking.

PROFESSOR MEISEL: I would think twenty years, twenty-five years; I don't think anybody is going to be passionately interested in draft 14 of

our proposals for the Supreme Court.

PROFESSOR CONWAY: Except if the Ontario Advisory Committee on Confederation is still sitting.

PROFESSOR BRADY: We do not want to have some journalist, or even an academic, writing an article and quoting what we said at given meetings as members of this Committee.

THE CHAIRMAN: I don't know. I think there have been some pretty good bons mots from time to time.

PROFESSOR LEDERMAN: Yes, but the journalist would not use those.

PROFESSOR CONWAY: What would you say, twenty years? I think it is preposterous to destroy all this stuff.

THE CHAIRMAN: Yes.

PROFESSOR LEDERMAN: The secretariat put together a list. Would it be a difficult task to check off things that are plainly in the public domain, so to speak?

THE CHAIRMAN: This is what I wondered, if someone could go up one afternoon, Ed, at some stage.

PROFESSOR LEDERMAN: And leave everything else.

PROFESSOR CONWAY: I think if you just gave me a general note, it is hardly worth a visit.

THE CHAIRMAN: What happens in the

library? Do they sign some sort of bond that they keep these things under wraps?

PROFESSOR CONWAY: There are all kinds of things in big libraries on this continent which are not to be opened, like the (James) papers at Harvard that cannot be touched without consulting somebody in the family.

THE CHAIRMAN: I didn't know whether the particular university library had a procedure on this.

PROFESSOR CONWAY: What the universities want is to get the papers. They don't care, as long as they have them.

THE CHAIRMAN: Do we have a complete set of all the blue books here?

MR. POSEN: Yes, that is not the difficulty. The difficulty is with things like drafts that we have sent out. They have undergone a lot of change.

PROFESSOR CREIGHTON: Not a difficulty for you, but it might be for us.

MR. POSEN: We have not kept a complete record of the drafts.

MR. GREATHED: The Canadian and British governments have gone down to thirty-five years now, I gather, and a twenty-five year rule might be appropriate for us.

PROFESSOR LEDERMAN: Twenty-five years, or the termination of confederation, whichever is

the first. (Laughter)

THE CHAIRMAN: I don't mind twenty-five years. That is the year I am eligible for my Ontario government pension, so I should be out of the woods. All right, I think that maybe answers the question -- twenty-five years.

PROFESSOR CONWAY: Thank you.

THE CHAIRMAN: May they do well in the dusty corridors!

--- The meeting adjourned at 4:15 p.m.

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ONTARIO ADVISORY COMMITTEE ON CONFEDERATION

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FRIDAY, JUNE 20, 1970



VERBATIM REPORT OF PROCEEDINGS

ONTARIO ADVISORY COMMITTEE ON CONFEDERATION

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FRIDAY, JUNE 20, 1970

VERBATIM REPORT OF PROCEEDINGS

ONTARIO ADVISORY COMMITTEE ON CONFEDERATION

Meeting held in the Board Room, 6th floor,
The Frost Building, Queen's Park (morning)
and in the Cavalier Room, Westbury Hotel,
Toronto (afternoon) on Friday, June 20, 1970.

PRESENT:

Mr. H.I. Macdonald (Chairman)

Prof. A. Brady

Prof. J. Conway

Dr. E. Forsey

Prof. P.W. Fox

Prof. W.R. Lederman

Prof. J. Meisel

Mr. J.H. Perry

Mr. R.N. Seguin

Prof. T.H.B. Symons

Mr. A.R. Dick

Mr. F.W. Callaghan

Mr. D.W. Stevenson

Mr. A.G.S. Careless

Mr. E. Greathed (Secretary)

Mr. D. Hobbs)

)

Mr. G. Posen)

)

Miss E. Balfour) Secretariat

)

Mrs. J. Wilensky)

)

Mrs. A. Carroll)

--- At 9.45 a.m.

THE CHAIRMAN: I think the only members who are missing today are all in other places. Professor Creighton is away. Professor McIvor is in Africa, and Professor McWhinney is in Britain and en route to other places. I think that is all of those who will not be with us, Ed?

MR. GREATHED: That is correct.

THE CHAIRMAN: I would like to welcome you back. It is some time since we have met and, as usual, a number of related events have taken place in the interval, some of which I think we will be looking into in detail in subsequent items on the agenda.

I do not think I have any remarks other than to suggest the plan for the day. I thought we might deal with items 1 to 4 on the agenda this morning. At twelve o'clock we will go over to the Westbury Hotel for luncheon with the Prime Minister at 12:15, and items 5 and 6, I thought, would be the items that we would discuss with him after lunch - "Ontario and the constitutional review in the light of recent events including the Quebec election" and certain matters he wants to discuss about the future of the Committee.

I would think that, other things being equal, that might conclude the business of the day. If arising out of anything that takes place during the luncheon or during our meeting

with the Prime Minister, we want to resume for a while after lunch, we can certainly do that, but I thought we would just see how matters proceeded at that time.

Are there any questions then on the procedures for the day or any suggestions or comments on any other matters before we turn to the details of the agenda?

MR. GREATHED: Mr. Chairman, I might just mention that we may have to conclude at about 11:45. The bar will be ready about noon and the meal about 12:30. I should have a message from the Prime Minister's office fairly soon as to just when he will be over. I gather he has a fairly full schedule later this afternoon, so it may be rather close timing.

THE CHAIRMAN: Well, we will adjust accordingly. We are not very far away from there.

MR. GREATHED: I might also mention, Mr. Chairman, and take this opportunity to introduce to members of the Committee, some of whom have already met her, Mrs. Aileen Carroll. Aileen is a Maritimer and comes to us from Halifax and St. Mary's University in Dalhousie. She had the distinction of being the first woman at St. Mary's University and, if I am correct, was the only one of her year at St. Mary's. She joined us last month, and we are very happy to

have her with us.

THE CHAIRMAN: In that case she won't be inhibited by this solemn male gathering.

MR. PERRY: I don't think they are this solemn at St. Mary's.

PROF. LEDERMAN: Mr. Chairman, may I raise a question about the agenda?

THE CHAIRMAN: Yes.

PROF. LEDERMAN: I wonder if we should not have a little discussion this morning about the future of the Advisory Committee? Do we just face him cold on that one, or does he have something to tell us?

PROF. FOX: Just that we are fired
(laughter).

THE CHAIRMAN: I think that is a good point actually. We have been over this before and I have made some recommendations to him which I can describe, and perhaps under that heading we can have some discussion on it before we go over. It is fine by me. We can certainly do that and I think it will be useful.

In that case, let us move on to item 2 which will not detain us at any great length.

MR. GREATHED: Mr. Chairman, very briefly to report to the members of the Committee, we are now in the final stages of the publication of Volume 2.

We are expecting it to be ready about

mid-July, and I think there are some advantages to having it out about that time. First of all we shall ensure that it will be in the book stores well in time for the return of the students in September. Secondly, I think that with the constitutional conferences and so on coming up, it may well be a good opportunity for people to look at the papers and the issues discussed in the papers before that event.

I do not think there is anything more to report to the Committee, Mr. Chairman.

Gary?

MR. POSEN: No, that is fine.

PROF. FOX: May I ask if the title is identical to Volume 1, so that in a bibliography this will be listed as so-and-so Volume 1, such a year and Volume 2 such a year?

MR. GREATHED: Yes, that is correct. The general format of the volume will be the same too. We thought of perhaps making it a little more exciting, but then we thought of the confusion it might cause among librarians.

PROF. BRADY: Have you got an index?

MR. GREATHED: No, there is not an index to this volume.

PROF. BRADY: Unfortunate.

THE CHAIRMAN: Do you think probably that was a defect in the last one, Professor Brady?

PROF. BRADY: I think the lack of an index is always a defect in a serious book on social studies or governments, subjects of that kind.

THE CHAIRMAN: I suppose it is a big task.

MR. GREATHED: It is a big task, Mr. Chairman. Gary can correct me on the details, but I remember we had some discussion of it and I think the problem with this was that with papers covering so many different areas it was going to be very difficult to make a sensible index out of it.

PROF. BRADY: It makes it all the more urgent.

MR. GREATHED: I see Dr. Brady's point, because I think in essence a book is improved by that, but with this particular kind of book it presents some difficult problems.

PROF. LEDERMAN: Who is printing this, because if it is being done by a tape, the tape has electronic storage and the computer will do you an index.

MR. POSEN: It is being printed by McCorquodale & Blades, but how they are doing it --

PROF. LEDERMAN: If they are using older methods, there is no tape and there is nothing to my point.

THE CHAIRMAN: I suspect that may be

the case.

DR. FORSEY: I know absolutely nothing about computers, but I should have thought the preparation of an index for a work of this sort by the ordinary old-fashioned methods would take a very long time, and if you were going to do a good one, it would hold up your production. If you are putting the whole thing out on a computer, of course, it will spill out the thing like winking and it is a different matter. However, that might be fairly expensive.

PROF. LEDERMAN: Depends on how they are printing.

PROF. MEISEL: It would not be a very good index but would simply list the references to certain points, which is almost useless, I think, in a book of this kind, because the key points appear so often that you would have an enormous number of page references to certain things, and I do not think it would be really the most useful index of this kind of book.

PROF. LEDERMAN: It would simply give you pages where points occur, that is right; it would not give you categories.

DR. FORSEY: I was surprised to hear that a computer could do the kind of index that seems to me to be required. It rather confirms my misgivings on this. Merely to have the points and pages where they have occurred would

not, to my mind, tell you very much.

PROF. LEDERMAN: A computer now has a synonym capacity.

DR. FORSEY: Even so ---

PROF. LEDERMAN: If you are looking for the word "contractor" it would tell you where to look for the word "contractor" and also look for "agreements".

PROF. BRADY: Mr. Chairman, if we cannot have an index, at least if it is not feasible to have an index, we at least should have a pretty full table of contents with subdivisions into chapters indicated. That, after all, is not a considerable task.

PROF. LEDERMAN: That is manageable.

THE CHAIRMAN: Would you look to that, Ed, please? I suspect there are practical problems at this juncture without undue delay in preparing an index. Perhaps we cannot meet that but this other suggestion should be readily carried out.

Then that takes us to item 3 which is one of the principal items of business for the morning and that is the reports that the task force on inter-governmental machinery and institutions has been labouring over, under the chairmanship of Professor Lederman. They have a paper to introduce this morning, and a discussion to place before you. Bill, would you like to

take over this item, please?

PROF. LEDERMAN: The recommendations on inter-governmental machinery prepared by the Secretariat here, were related to, and to some extent based on, Mr. Burns' report on inter-governmental liason on fiscal and economic matters, the report commissioned by the Tax Structure Committee some three years ago now, I think, and which was only published a few months ago. With some modifications, the Secretariat prepared recommendations. Then the task force on inter-governmental machinery was resurrected from the past files and we came in about the end of May and went over the Secretariat's proposals.

We congratulated Mr. Hobbs in particular, and others who were concerned with the preparation of this report, on its quality. We then addressed ourselves to the problems it raised.

I think you have all received the copies of the rather full report of our meeting, so I will not go through that in any detail.

MR. GREATHED: Professor Lederman, if I could just interrupt for a moment, I think those members who were not on the task force probably just had this report put in front of them this morning, so it might be helpful if you wouldn't mind, to review your major

conclusions at least.

PROF. LEDERMAN: We can certainly do that then.

PROF. SYMONS: It really would be, I think, Mr. Chairman. I think most of us have not seen the paper.

MR. STEVENSON: Mr. Chairman, it might be pointed out, I suppose, that it is quite possible there would be a discussion of the question of machinery at the Prime Ministers' meeting in September, and that both Ontario, I guess, and Alberta, had requested that this subject be at least given a preliminary discussion.

PROF. LEDERMAN: Professor Burns had quite an elaborate structure suggested for federal-provincial inter-governmental relations, and I think the Secretariat simplified that somewhat in their proposals; and the task force, when it met at the end of May, perhaps simplified it even further. Whether we have over-simplified it or not, I do not know.

When you look at page 20, Appendix A, you will see the Secretariat's recommendations. This is related to the structure of inter-governmental relations.

Then I will just go through the main points of the proposals. On page 20(A):

"A Committee of First Ministers which

"will meet at least annually to discuss
"pressing operational problems, and
"general priorities and objectives of
"governments in Canada"

Of course, we agreed with that. This is the keystone in the arch of the whole structure of intergovernmental relations.

What is being proposed is that there should be a meeting at least annually and the purpose there was to avoid the ad hoc arrangements of the past and to produce continuity; because federal-provincial intergovernmental co-operation is becoming such a constant necessity that it needs the direction of a regular meeting of the First Ministers, and only they are in a position to make the policy commitments and see that they are carried out. That is the point which is made at the bottom of page 2 and at the top of page 3.

There was some discussion of whether there had been in the past proper notice and proper preparation for conferences of First Ministers called by the Prime Minister of Canada; so we suggest that the requirements in that respect should read "at the call of the Prime Minister of Canada with due notice" and we were opposed to becoming any more specific than that.

PROF. FOX: May we interrupt, Bill,

with questions?

PROF. LEDERMAN: Yes, I think it is best to do that as we go along.

PROF. FOX: What type of example of further particularization to which you are opposed, would you give us? You mean setting a specific date, for example, the first Monday in May or something like that?

MR. PERRY: We had a whole list: who should establish the agenda, for example? How should it be established and how much in advance of the meeting? I think you can get down to all sorts of housekeeping details that certainly would not be appropriate in a written constitution.

PROF. MEISEL: There is another aspect to this, though, and I do not know whether one can do much about it, but it seems to me that although by simply calling for an annual meeting you are certainly doing something, annual meetings could become a very perfunctory kind of social event ; and unless you give this Committee of First Ministers certain responsibilities, such as approving agendas of other things or doing certain very specific things, it may never really take . There might be some point in assigning it, in a very general way, certain kinds of responsibilities that that Committee might undertake which would compel it to do more than just meet in a very formal sort of way.

DR. FORSEY: I think the danger of meetings of this sort becoming purely formal social events is microscopic. Given the assertiveness of the provinces I cannot imagine, (apart from anything else) the thing degenerating into a mere tea party. I should think it is quite unnecessary really to specify or particularize there.

PROF. LEDERMAN: Yes, I rather agree with Eugene. The minute you start into a detailed list, then you have to try to foresee everything and make it complete, and if you do not rest with a rather high level of generalization then you have got to get very particular. I think your choice is between a few general statements and about 65 pages of particulars.

DR. FORSEY: Even if you preface your particulars with the proviso that "this is not to restrict the generality of the foregoing terms" we all know what happened to that one. It really doesn't get very much forwarder.

PROF. LEDERMAN: I am inclined to think that the pressures that are on First Ministers to spend their time usefully is such that they are not going to hold perfunctory conferences. That is point 1. Point 2 is that the need for co-operative effort and the need for this high level of co-ordination by the only people who

can ultimately carry the ball on big policy decisions, the need is such that the probability is that not just one annual conference will be necessary but more than one in a year. It was on the basis of that reasoning that we were reluctant to particularize just who should do what.

I think if you look at the bottom paragraph on page 3, the right of the Government of Canada or the governments of any five provinces to convene an intergovernmental conference is intended to provide mainly for additional federal-provincial conferences. It recommends that this provision should be written to include the wording of provisions A and B, and thereby precluding any ambiguity which might arise, and then read:

"The Government of Canada or the
"governments of any five provinces
"shall have the right to convene
"additional conferences of the
"Prime Minister of Canada and the
"Prime Ministers and Premiers of the
"provinces or additional conferences of
"the Minister of Finance of Canada and
"the Ministers of Finance and Treasurers
"of the provinces for the purpose of
"discussing an important national or
"regional problem."

So it seems to me that there are two ways of calling these top level conferences. There has to be one called annually by the Prime Minister of Canada or the Minister of Finance of Canada in the case of the Finance Ministers. Then there is provision whereby either of those groups can be summoned by any five provinces.

I just presume that anybody who had what they considered to be an important item for the agenda would be able to get it on - "any government" including the Government of Canada, of course.

PROF. MEISEL: I see the problem of drafting this in such a way that you pin them down to a lot of things that you cannot possibly forecast; but what crossed my mind, of course, was the example of the meetings of the provincial Premiers, which, I think, have not been as fruitful as they might have been, precisely because they have not had some sort of continuing sense of responsibilities.

I was really looking for something a little more structured than is provided here, which would compel the Prime Ministers' conference to have some sort of small Secretariat that would keep operating throughout the year.

DR. FORSEY: There is provision for a Secretariat later on.

PROF. MEISEL: Yes, but not specifically

to work in that area.

DR. FORSEY: I must say I am astounded by the suggestion that these chaps might meet, twiddle their thumbs for a few minutes, have a cup of tea or something, struggle and go home.

PROF. MEISEL: You misunderstood what I had in mind. I was not thinking of that at all. I can see that there would certainly be fairly vigorous exchanges of opinion, but if you have an exchange of opinion of this sort once a year and then nothing is done to follow it up and nothing leads up to it, I think it is less fruitful than if it is integrated in some sort of continuing process.

DR. FORSEY: But there are a whole series of further proposals which would seem to me to look after this. I would say if these meetings become perfunctory it would be simply because the problems have disappeared, and I find it very difficult to believe that within the lifetime even of my grandchildren the problems will disappear.

PROF. LEDERMAN: I do not think the analogy with the interprovincial conferences should frighten us, because there is an interlocking of federal-provincial subjects in the same territory, an overlapping which does not occur between provinces in their separate characters and their separate subjects. This

is why I think the provincial Premiers' conferences tend to be perfunctory.

The danger with the federal-provincial conference is that the federal government will just dominate the agenda and not give proper notice, put out proper papers, and so on. I think this has rather been the danger that experience has indicated.

MR. STEVENSON: Mr. Chairman, I think this subject really has to be treated on two levels. We are into it right now because we have been pressing for it to be included in the constitutional review. The federal government and some of the other provinces, I think, have taken the position that the question of machinery has a fairly tenuous connection with the constitutional argument. I think we have been trying to bring it in because we think it is an important aspect of ongoing federalism, and it could come up in the non-constitutional meetings of the Prime Ministers as well as the constitutional; but certainly I would feel that representations by Ontario to the constitutional review process should probably include a fairly general recommendation, as here, of something to be written into the constitution regarding the machinery. However, it certainly helps or would help if at the same time we had a series of operating recommendations as to how, at

least in the short run, we envisage annual meetings, the back-up and all the rest of it, working.

I see no real problem. I think both of the subjects that have been discussed are important, but obviously in the constitution itself you cannot and should not bring in most of the operating details.

MR. SEGUIN: I think what you mean, Don, is that after the constitution is written you still require a set of rules and regulations which are subject to being amended by the members.

MR. STEVENSON: Sure.

MR. SEGUIN: If you put anything else in the constitution, you have got to start the whole ball rolling again.

MR. STEVENSON: Right.

MR. SEGUIN: Let us start with the constitution and, as Don says, if we go further then we go further by establishing a set of regulations and rules.

MR. PERRY: By-laws.

MR. SEGUIN: Which would operate at these meetings.

PROF. LEDERMAN: On page 21 of the Secretariat's paper on intergovernmental machinery it says:

"Although the Report does not deal
"with the question of constitutional
"revision, we would advocate the

"inclusion of a section on inter-
 "governmental relations in a re-
 "written Constitution."

It was to this point that we were addressing ourselves in the end of May. This would be written into the Constitution, and this is why we were saying it should only be very general and not a catalogue of particulars. (a) says:

"A conference of the Prime Minister of
 "Canada and the Prime Ministers and
 "Premiers of the provinces at least
 "once every year."

The provisions to be written into the constitution on intergovernmental relations would provide for a conference of the Prime Minister of Canada and the Prime Ministers and Premiers of the provinces at least once every year, and we proposed at the end of May that to that should be added:

"... at the call of the Prime Minister of Canada with due notice". We did think that that much procedure should be put into it, and that he should be fixed with the responsibility to (a) give due notice and (b) to call it.

Then the second statement that we thought was enough for the constitution proper, was a conference of the Minister of Finance of Canada and the Ministers of Finance and Treasurers of the provinces at least once every year. We recommended

there "at the call of the Minister of Finance of Canada with due notice". Then (c):

"The Government of Canada, or the
 "Governments of any five provinces
 "shall have the right to convene an
 "intergovernmental conference for the
 "purpose of discussing an important
 "national or regional problem."

And we recommended re-wording that so that it would read this way:

"The Government of Canada or the
 "Governments of any five provinces
 "shall have the right to convene
 "additional conferences of the Prime
 "Minister of Canada and the Prime
 "Ministers and Premiers of the
 "provinces, or additional conferences
 "of the Minister of Finance of Canada
 "and the Ministers of Finance and
 "Treasurers of the provinces, for the
 "purpose of discussing an important
 "national or regional problem."

We wanted the procedure to relate to (a) and (b) to make it clear that it was those two types of conference that could be called by five provinces.

Further on at the top of page 4:

"We further recommend the inclusion
 "of a fourth provision (d) to read:

'The foregoing is without prejudice

'to the convening of other types
'of conferences which governments
'may wish to call.'"

And there would be a multitude of those. I mean, there is the conference of Ministers of Education, Resource Ministers, and you may want a conference on uniformity of highway signs and that sort of thing. We did not want to convey the impression that (a), (b) and (c) excluded any other kind of conference.

That is all we thought ought to be written into the constitution. The rest of the discussion here, as Roger has pointed out, would be either the explicit or implicit rules of procedure on federal-provincial conferences.

PROF. SYMONS: Mr. Chairman, I would just like to say that I support the approach that the Committee and Prof. Lederman take, and I think that it is better in the constitutional document if this is to be incorporated into one, to set out general provisions of this sort and then where we can get at the points that Prof. Meisel has, I think, properly raised, is in discussion of the actual intergovernmental machinery. It seems to me that this is either going to make this work or else make it a platitude, and part of that might involve this drafting of a paper for people to look at as to what the procedures might be in more detail for the convening or conduct of some

of these meetings; but still more important, I think, is the actual provision for machinery: who is on it, what does it do, where is it and so on?

May I raise just one question. It is perhaps not important but it intrigues me. Does the suggestion that these conferences could be convened by, as I gather, either the Prime Minister of Canada or the governments of any five provinces legitimize in some subtle way meetings that are convened by five provinces and in some subtle way de-legitimize meetings that are convened by less than five provinces, because undoubtedly this will continue to occur.

THE CHAIRMAN: Or does it imply that in the future there are only going to be five provinces (laughter).

PROF. LEDERMAN: You will notice that at the bottom of page 3 our recommended re-phrasing of that was:

"The Government of Canada or governments
"of any five provinces shall have the
"right to convene additional conferences
"..."

So the regular annual conference is the responsibility of the Prime Minister of Canada and the words "at least once a year" mean that he can call them oftener if he wishes.

DR.FORSEY: "Additional conferences of

"the Prime Minister of Canada and the
 "Prime Ministers and Premiers of the
 "provinces, or additional conferences
 "of ..."

As I read it, this does not in the slightest degree prevent the three Maritime provinces or the four Atlantic provinces from convening conferences of their own if they feel like it, without inviting anybody else or bothering anybody else, if they have something they want to discuss among themselves. What is provided here, as I read it, is that any five provinces can say: "We want a grand conclave of all the Prime Ministers and Premiers" - First Ministers, Chief Ministers or whatever you want to call them.

PROF. LEDERMAN: These are federal-provincial conferences, whichever way they are called and you cannot leave anyone out. I think this is what it is intended to say. If it does not say that clearly enough, perhaps it should be re-worded.

PROF. SYMONS: I think it does say it, but I think there are a number of important points in here, Mr. Chairman. This would be the first time in our experience that a group of provinces could compel the Prime Minister of Canada to attend a conference. A group of provinces ---

PROF. LEDERMAN: Yes.

PROF. SYMONS: --- could in effect, from the provincial side only, convene something that would have the status of a federal-provincial conference.

PROF. LEDERMAN: Yes, that is true, it would be. Of course, this issue was up at the time of the Confederation of Tomorrow conference. As to agreement of five provinces, it seems to me that if you have been able to get that you ought to be able to have a federal-provincial conference.

PROF. SYMONS: I support it, Mr. Chairman. I think it is a very important document.

PROF. FOX: But I think I see what Tom is driving at, and that is you are suggesting that if this were in the constitution there might be some legitimacy about Mr. Robarts having called the C.T.C. conference and having invited federal observers even. At least it casts more doubt upon the procedure. Is that your point?

PROF. SYMONS: Yes, part of it.

PROF. LEDERMAN: It casts doubt on the single provincial premier calling - well, the whole theme of this provision is federal-provincial conferences, not interprovincial conferences where there is no federal presence.

PROF. FOX: There was a federal presence though at the C.T.C. of a kind.

PROF. LEDERMAN: But it was not a ministerial presence.

PROF. FOX: No.

DR. FORSEY: That was a different thing altogether; that was an individual premier. All we are talking about here is five provinces, and Roger raised the point that if you get a consolidation of some of the provinces you might get a situation where this would mean the unanimous desire of the provinces. Perhaps you had better phrase it "the majority of the provinces" or something of that sort.

PROF. LEDERMAN: That might be a better phrase.

MR. SEGUIN: "a majority of the provinces".

PROF. LEDERMAN: Six.

MR. SEGUIN: Six now. It could be three, it could be four.

PROF. FOX: "A majority of the existing provinces".

MR. SEGUIN: If they do not exist they cannot ---

PROF. FOX: Yes, but somebody might interpret it as a majority of the provinces that exist now.

PROF. LEDERMAN: That is a good point.

DR. FORSEY: No.

MR. SEGUIN : No, I don't think so

either. If they do not exist in the future, they are not there.

DR. FORSEY: If you have a situation where you have the constitution amended to provide for only five provinces and this particular section of the constitution said "a majority of the provinces" it would be a majority of five. If, on the other hand, you multiplied the provinces and had fifty, then this section saying "a majority" would mean it is twenty-six out of the fifty.

PROF. LEDERMAN: This is assuming that we will always be ten provinces.

MR. SEGUIN: That is it. That is why you need to amend again your Act to put "a majority". I think it would be better.

PROF. LEDERMAN: You could cover Paul's point by saying "a majority of the provinces from time to time".

MR. STEVENSON: If you want that, is five a majority of ten?

PROF. LEDERMAN: No, definitely not.

MR. STEVENSON: Then could you say "at least half".

MR. SEGUIN: Suppose you had nine.

PROF. FOX: Or eleven.

MR. SEGUIN: Then what happens?

MR. PERRY: More than half.

MR. STEVENSON: Five in the case of nine, or six in the case of eleven.

MR. SEGUIN: If you put "majority" I think you are safer and you won't be going to the Supreme Court.

MR. STEVENSON: I was trying faithfully to reflect the answer of the task force.

PROF. MEISEL: Mr. Chairman, at the risk of opening another can of worms, what about the business of the number of people living in these provinces?

MR. SEGUIN: I wouldn't start with that, boy!

THE CHAIRMAN: You mean "rep by pop" instead of "rep by prov".

PROF. MEISEL: Well either that simply or provinces which contain ---

MR. PERRY: No, you don't have to do that. These people come to these conferences surely as equals and can be counted as equals in determining whether there is a consensus or not.

DR. FORSEY: Besides, if you have five, suppose you take the five smallest ones; if you get the four Atlantic provinces plus - what would be the next one, Manitoba or Saskatchewan?

MR. STEVENSON: It will be Saskatchewan in about three months.

DR. FORSEY: Then it would be indicative of something that was fairly widely felt, indicative at least of a serious regional grievance.

PROF. MEISEL: Yes, what I was thinking of was the other possibility of Ontario and Quebec being very anxious to have a conference and not being able to get it because they were only two provinces.

DR. FORSEY: I wouldn't worry much about the capacity of Ontario and Quebec to raise enough rumpus to get a conference if they wanted one. I think those two giants can look out for themselves.

MR. SEGUIN: If they can't convince me either, there is something wrong in Canada.

(laughter)

PROF. LEDERMAN: The avenue for a group of provinces with less than a majority or less than half, is to persuade the Prime Minister of Canada to call an additional conference.

DR. FORSEY: Yes. If Ontario and Quebec acting together, could not persuade the Prime Minister of Canada to call an additional conference, by George, something extraordinary has been happening in this country.

PROF. SYMONS: Mr. Chairman, the main point though is that I think for the first time it would be formally recognized that from a provincial source something that would be a formal federal-provincial conference could be called. I think this is a very desirable step forward and a very big one.

PROF. LEDERMAN: I appreciate the force of John's point about population. For instance, in some of the formulae that have been proposed, the question of population has been confined to the number of provinces, that is true; but here we are dealing specifically with the relations of the federal government and the provincial governments; and I think that when you are dealing in that way with federal-provincial relations, you have to take each government as a unit and each government counts for one. Even in the United States Rhode Island counts for one in this sort of thing. They have as many senators as New York in the United States Senate.

MR. PERRY: You are only talking about a meeting here. It is not as if you are deciding on big expenditure programmes or anything of that sort.

PROF. LEDERMAN: This is the extent of the proposal about what should be written into the constitution, that is, into the specially entrenched constitution. Everything else now that follows here is a question, I should think, of the First Ministers sanctioning procedural structure that covers the rest of the machinery of intergovernmental relations. What we have been discussing up to this point is all that we propose to write into the specially entrenched constitution.

Roger's suggestion that it should be a majority of the provinces from time to time rather than five provinces, strikes me as a very good one.

MR. SEGUIN: What does "from time to time" mean? You don't need that.

PROF. LEDERMAN: Of course, you have the general rule that a statute speaks in the present and the constitution speaks in the present.

MR. SEGUIN: The constitution can speak for itself fifty years from now if you don't put too many complicated words into it.

PROF. LEDERMAN: I agree with you.

MR. SEGUIN: "from time to time" for me does not mean anything.

MR. PERRY: Gentlemen, when you look at this, we have left in the qualification that does not appear in either (a) or (b), that these meetings have to have a purpose: "for the purpose of discussing an important national or regional problem". I wonder if we should really be qualifying this to that extent, because it raises the question immediately as to what is an important problem.

PROF. LEDERMAN: Yes, my reaction to that, Harvey, would be that it is subjective: one takes it that if five provinces say it is important, it is important.

DR. FORSEY: Put a full stop after

the word "province".

PROF. LEDERMAN: But you could dispense with that.

MR. PERRY: We qualified this in a way we have not at the other conferences, and these are supposed to be the equivalents, so I do not see the need for a qualification.

PROF. LEDERMAN: "for the purpose of discussing an important national or regional problem" may be superfluous, and it could go out; one could take it for granted.

MR. PERRY: They may just want to discuss an unimportant problem.

DR. FORSEY: They may want to have one of John Meisel's perfunctory comments for social purposes.

PROF. BRADY: I think that last clause could be dropped.

PROF. SYMONS: I would support that too. I think the last clause, more than being unnecessary, having it there loads the calling of such an additional conference with the implication that there is some sort of possible crisis or emergency aspect to it, whereas the complexity of government is such that they may well need a whole variety of these conferences over the period of a couple of years.

MR. STEVENSON: Think of the proportion of the time the Speaker rules that an issue is important enough to set aside a special

debate in the House.

DR. FORSEY: Yes, you might conceivably have a case here where the Prime Minister of Canada would say: "It is not an important national or regional problem, and I won't summon it" and they might have to take it to the Supreme Court to decide whether the Prime Minister of Canada was within his rights in making such a decision.

MR. PERRY: Isn't this just mechanical? We are just providing another means for calling conferences, similar to (a) and (b), so I don't see that we need this qualification at all.

PROF. FOX: Let us drop it.

PROF. LEDERMAN: There is a sleeper there that I did not appreciate. I think it ought to come out.

THE CHAIRMAN: Okay.

PROF. LEDERMAN: We did recommend the inclusion of a fourth provision to read:

"The foregoing is without prejudice
 "to the convening of other types of
 "conferences which governments may wish
 "to call."

"Other types of conferences" means conferences other than of First Ministers or Finance Ministers which we consider to be the two most crucial types. Then we just simply say that other types of conferences can be called, and that they are not

excluded just because there is some specific provision about the two most urgent types.

So that (a), (b), (c) and (d) would be all that would go into the specially entrenched constitution. The rest of it would be purely statutory or rules of procedure sanctioned by the First Ministers' conference for the conduct of intergovernmental relations, in the same way that the First Ministers have set up a procedure and an organization now that is functioning. They have sanctioned it by their own resolution, and where necessary each government makes its own statutory arrangements to carry out its part. This keeps it very flexible at the level of detail.

We might go on now to that particular type of detail, remembering that that is what we are speaking of at this point, that that is the status of the provisions we are speaking of here.

MR. PERRY: Bill, I wonder if at this point we should introduce the red covered document (it looks like Mr. Benson's white paper) because in fact a good deal of the rest of it is based on the Ontario proposals at substantially pages 18 to 22.

PROF. LEDERMAN: Yes, that is right.

MR. PERRY: Para. 22 on page 19 is fairly significant.

PROF. LEDERMAN: Yes, in the red document starting at page 18.

THE CHAIRMAN: Bill, I might just interrupt for a minute to give a little note of background on a couple of matters.

First of all, as far as the disposition and purpose of your task force report is concerned, I might just say a word about this topic in the context of the constitutional review.

This subject has been regarded as an important aspect of the constitutional review process and the whole discussions of Canadian federalism, by the Ontario Government. At one of the early constitutional conferences, I think the one in February 1968, when certain topics or certain bands of discussion were set out, it was the Ontario Government that added the topic of intergovernmental machinery. In the interval we have been very interested in developing the views and suggestions on the question of intergovernmental machinery. We have initiated discussions of that in the Continuing Committee of officials on the constitution and also in the Continuing Committee on fiscal and economic matters.

As a result the subject will be one of the agenda items for the next meeting of the constitutional conference, which is presently planned for some time in September - one of the so-called working sessions as opposed to a public session.

At that time we would like to be in a position to present a paper which would set out some suggestions and some views of the Ontario Government, both for inclusion in the constitution and for general application in the relations between governments.

So that it is working towards that objective that we look upon this paper, and why I think this task force report will be extremely important to us and helpful in providing us with material on which to base that paper.

Secondly, as I mentioned, over the last few years various papers have come out from the government in these meetings, and as part of the budget papers and so on, all on the subject of intergovernmental machinery and co-ordination; because these things tend to become scattered or to get lost in the process and we decided it would be useful this spring to gather together some of the work that had been put forward in the government, in two volumes. So these were the ones which were tabled in the House by the Prime Minister on May 4th, and presented to a meeting of the Federal-provincial officials at the same time.

The blue document, "Ontario Proposals for Fiscal Policy Co-ordination" was the reproduction of certain government statements prepared by the Treasurer as part of his budgets.

So the government book as such is the blue book; the red book is the staff papers. I have never been able to discover whether there is any significance in the colour chosen. (Laughter)

PROF. MEISEL: Was that tabled on 1st May?

THE CHAIRMAN: But whether there is or not, the staff papers are in red and the government in blue. These represent, as I say, staff papers which were tabled at various meetings of officials. So whereas the red book represents work that was done with the approval of the government, it does not necessarily, of course, represent government policy as yet, but we would hope that it would be carried forward in this medium into governmental policy at some stage.

Finally, just in passing, the third item we have passed around (which we thought you would like to have) is the Ontario proposals for tax reform in Canada, in response to the federal government's request for comments, suggestions, criticisms of the White Paper. This represents the government response. It is not merely, I might say, a criticism of the federal White Paper, but an alternative approach to tax reform in Canada.

MR. STEVENSON: One document that was not tabled was the 200 page result of a revenue

estimating process.

THE CHAIRMAN: We spared you that. Anyone may have a copy on request. I am sorry, Bill. I thought it would be useful to put that in that context before we went on to the details of co-ordination of process.

PROF. LEDERMAN: On page 4 of the report of our task force, we address ourselves to the question of the support organization for the conference of First Ministers and the conference of Finance Ministers.

Now, the Burns' report recommended that there should be, in support of the conference of First Ministers, also a committee of senior officials. The members of the Secretariat came to the conclusion that this was not desirable, and the members of the task force agreed with them, on the grounds that are outlined there. In the first place, the Prime Ministers of the provinces and of Canada are going to come to their top level conferences with their senior civil servants and advisers anyway, and they are going to send them away with instructions either collectively or separately, to get certain things done. We were afraid that if one formalized the constitution of this body, you would then have a civil service group that was in effect superior, would or at least/appear to be superior, to other meetings of Ministers, which was undesirable.

You see, the conference of Prime Ministers will, of course, range over every topic under the sun; its franchise so far as subjects or topics are concerned is unlimited. We just did not think that a corresponding civil service group, however senior, should be given the same breadth of franchise, particularly when there are going to be other provisions for more particular meetings of Ministers. So we thought that there should not be a committee of senior officials to support a conference of the heads of government, as recommended in the Burns report. This is one point where we differ with the Burns report. The people who would form such a committee will function anyway in their normal way at the elbow of their Prime Ministers and under the instructions of their Prime Ministers, and we did not think that they should be given formal status.

When it came to the Continuing Committee of Ministers of Finance, or conference of Ministers of Finance and provincial Treasurers, we did take the position that there ought to be a Continuing Committee of senior officials there.

You may well ask: "Why are you against them in one place and in favour of them in the other?". The only answer is, I think, that fiscal and economic matters do not form the whole range of governmental responsibilities insofar as

technical, analytical and statistical support for the operation of Ministers of Finance; that so far as that is concerned, there is a reasonably well defined area for recognized experts to function. So long as it was understood that the committee of permanent officials on fiscal and economic matters, supporting the Treasurers and Ministers of Finance, would be charged with that kind of function and were not given major decision-making authority, we thought it did make sense to have that kind of support for the Ministers of Finance. On the other hand, the Prime Ministers' group would have, of course, their senior civil servants at their elbow and since they range over every subject under the sun there is not the well-defined subject area, nor is it clear what type of expertise is going to be needed from time to time.

We were afraid that in such a sweeping topical situation, such a committee of permanent civil servants might tend to overawe the more particular committees of federal-provincial Ministers that would meet from time to time.

That is a major point of difference from the Burns report, and perhaps I should stop there because none of these things are free from controversy. Perhaps we should discuss that point before we go on to further points here.

PROF. FOX: It seems to me, Mr. Chairman, that Professor Lederman has made a good case for

what the task force suggested, and I see no reason to question the decision. It seems to me to be quite sound.

PROF. SYMONS: I think I can share that view too, Mr. Chairman, I think there is a distinction, and that it is a valid one. The concern that some people might feel is, I think, met by the proposal later on for the Secretariat.

PROF. LEDERMAN: Yes, there is a major proposal for the Secretariat later on.

MR. STEVENSON: Mr. Chairman, I think, not having been associated with this, I can be a little bit independent. The situation now is, I think, that there is such a great variety among the various governments of general responsibility for federal-provincial relations, that it would be pretty hard to imagine a permanent group of civil servants that are concerned with the whole variety of subjects the Prime Ministers will be discussing.

I think that governments generally across Canada are moving towards the establishment of more central agencies which are of a basically equivalent nature, I think, in Prime Ministers' offices, Privy Council offices, federal-provincial secretariats or whatever.

You may find that in three, four or five years there is sufficient communality of internal organizations that some group of this type might

become at some time in the future a desirable affair. Right now it would be a real grab bag.

MR. POSEN: As a matter of fact, Mr. Chairman, the Alberta Government has made a formal and public proposal regarding inter-governmental liason, in which governments internally set up a structure of responsibility for intergovernmental relations.

PROF. FOX: Similar to your federal-provincial affairs Secretariat?

MR. POSEN: In their paper, they mention Ontario's organization in effect, and they do not specify which kind in particular but they just hope that within each government there would be a group formally responsible for co-ordinating these kinds of relationships.

MR. GREATHED: Just a minor point. This paper is not published.

MR. POSEN: It is published, yes. They had a press conference yesterday.

THE CHAIRMAN: Paul?

PROF. FOX: I am just saying it is essentially the same idea.

PROF. SYMONS: Would it be possible, Mr. Chairman, to get copies for the Committee of the paper, if it is now available?

THE CHAIRMAN: Yes, I think we will check for certain, but when those papers were

tabled at Banff on Wednesday morning, they were tabled with the qualification that they were still confidential, but I believe, as you say ---

MR. POSEN: There was a press conference.

THE CHAIRMAN: The Premier had a press conference and made them publicly available, so we can certainly get copies for you. Are we ready to go on?

PROF. FOX: I think we should go on.

PROF. LEDERMAN: If you are happy with that one, we will go on to the Federal-Provincial Tax Commission. This is an Ontario proposal that we had misgivings about, and we have listed the misgivings.

In the red book we printed staff papers, and the Federal-Provincial Tax Commission proposal appears on pages 20 and 21:

"The second type of new institutional
 "arrangement required in the area of
 "federal-provincial fiscal and financial
 "co-ordination concerns the need for a
 "high degree of co-operation in the
 "administration of tax systems on a
 "continuous basis ..."

Then it goes on to speak of the need for harmonization and co-operation with the federal government in jointly occupied tax fields. Overall tax supervision would be a function of the Federal-

Provincial Tax Commission.

"The first function would be to provide
"a system for supervising federal and
"provincial municipal tax developments
"and practices in terms of their
"conformity to the common standards
"established by the ministerial committee
"on intergovernmental policy co-ordination.
"Apart from acting as a clearing-house
"of tax information, the commission
"could undertake analysis of the social
"and economic effects of tax policies
"and actions, particularly of their
"cross-jurisdictional implications.
"The commission could also be responsible
"for co-ordinating research on new tax
"proposals and options."

Our reaction to that, quite frankly, was rather negative. Harvey can speak to this with more knowledge.

"We think that this Commission would be
"a very large undertaking, almost a
"permanent Royal Commission on taxation.
"Alternatively, we think that perhaps
"efforts should be concentrated on
"bettering existing machinery rather
"than creating new devices. We
"also considered the question of
"limiting the scope of the Commission

"to research and statistics.

"On staffing we thought that the
 "necessary manpower for such a commission
 "would be very scarce indeed."

In the third place, (c):

"We question the status of such a
 "commission. As there is no mention
 "in the Burns report of giving
 "operational responsibility to a federal-
 "provincial tax commission, such
 "responsibility should remain where it
 "now resides - with federal and
 "provincial Departments of Finance.
 "We do not think that governments either
 "provincial or federal, would be willing
 "to relinquish these responsibilities.

"We wondered whether such a
 "Commission, if independent of the pro-
 "posed ministerial committee, would, in
 "its operations, contradict the principles
 "of responsible government.

"We raised several questions on the
 "procedure that this Commission would
 "follow since it did not appear to be
 "clearly delineated in the Ontario
 "proposal."

For instance, the word "supervise" in
 paragraph 27 of the provincial proposal on page 21
 of the red book: who gets supervised and what

does "supervising" mean?

I think a little later on we pointed out that the research and statistical functions of a provincial tax commission could be carried out by a financial division of the permanent Secretariat.

Perhaps, Harvey, you can speak with more knowledge and confidence on these matters than I can.

MR. PERRY: I think our memorandum sets out pretty well the views that we had. I can easily see that there is a job to be done here. There are lots of rags and tags of things that no one feels particularly responsible about, because they are in the sort of "no man's land" between federal and provincial governments; but I just couldn't see that this called for either a separate function of this type, something called a tax commission, or that that much more than a co-ordination job would be involved, but a lot of the basic research will have to continue to go on within governments; and the function here would be to try and use what was being done within governments to fill in gaps either directly through research in what would be a permanent Secretariat, or else by encouraging governments to fill in the gaps. We felt that generally there was an important job to be done but not so important that it called for this separate kind of an entity, for which I could think of no precedent anyway.

PROF. BRADY: It would be a separate agency, in other words, that would in a sense be duplicating work.

MR. PERRY: It would be separate from the permanent Federal-Provincial Secretariat, and this could cause confusion in itself.

PROF. BRADY: A sound rule should be the simplification of governmental structure rather than the addition of more structure.

MR. PERRY: Just to express my own view, I could clearly see there was a job to be done but I did not see that it called for a separate piece of machinery as important as this. In fact, it might even better be done in close co-ordination with all the other jobs of the permanent Secretariat.

PROF. LEDERMAN: This was one of the themes we worked at, to see if we could simplify both the Burns proposals and even the Secretariat's proposals and the Ontario proposals, on the theory that the simpler the structure was the better it would work.

PROF. MEISEL: Bill, I come to this question cold, but the question in my mind is really whether there is some mechanism, or whether there are mechanisms which permit what I think is a very desirable objective, namely to undertake an analysis of the social and economic effects of tax policies. I presume that you

were satisfied that the other proposals together would assure that this is done?

PROF. LEDERMAN: Well, in the next paragraph here we refer to the permanent Secretariat, and we think, as Harvey says, that these statistical and analytical functions should be performed but the best way to have it done is by a financial department of the Federal-Provincial Secretariat, which is quite clearly a civil service operation under the Committee of Finance Ministers and under the committee of Deputy Ministers.

We have already said that we approved these two bodies for fiscal and financial co-ordination, and we think that the research and analytical and support function can be performed by a financial section of the Federal-Provincial Secretariat and not a separate tax commission. I think we have the same objection that we had to a permanent committee of officials at the Prime Ministerial level: that you would get a group of persons appointed specially for the purpose or senior civil service people, who would then be operating at the political policy-making level.

DR. FORSEY: Even under the proposal, to some extent apparently at the operational level, this supervising business is what it means.

PROF. LEDERMAN: Yes, we just were not clear on what that meant. Tax harmonization,

of course, is a very complex matter, as the European Economic community is discovering I think, and it involves policy decisions even about social services and all kinds of things.

If a Tax Commission were to get into that sort of thing, we would have an appointed body with really extraordinary powers. I think even in Australia where they have some kind of federal-provincial co-ordinating finance committee, it does not operate this way at all. It is the ministerial representatives with a weighted voting system, is it not?

DR. FORSEY: The Loan Council.

PROF. LEDERMAN: The Loan Council, and they deal only with raising capital funds, I gather, so we were dubious of this for the reasons given.

PROF. SYMONS: Mr. Chairman, it seems to me it is a tremendously important question, but I think that the reasons that Professor Lederman and the committee put forward are pretty cogent. I think there are real problems to a tax commission, problems of responsibility, problems of creating an agency that in a sense could become above the constitution or above the legislative process.

I think it is very important that the kind of considerations that Professor Meisel raised should be gotten at - research and assessment of the impact of tax policies and economic policies.

I think the right way to do it is as suggested here, by appropriate people within the Secretariat to be an appropriate financial division. I think that this would achieve all the practical things that are desired, without getting into some of the difficult constitutional implications of a permanent Tax Commission.

PROF. LEDERMAN: We did think that as far as supervision and operation were concerned (these words are used) that the respective federal and provincial departments of finance are just not likely to surrender their existing functions or powers to an overall Tax Commission, and if they were to be called upon to do so the formula for doing it would be very difficult.

MR. STEVENSON: Mr. Chairman, there is one point here. In the original Ontario proposals a year or so ago one of the suggestions was that it might be possible to have a central commission collecting income taxes that perhaps would be on different bases - something that the federal government has always rejected in principle saying that it would only enter a taxation agreement provided the provinces it was collecting taxes for had exactly the same basis as its own. There has been a slight modification to this in the federal White Paper.

Do I take it that the task force really felt that this would still be a matter of the

federal government collecting on behalf of provinces perhaps with somewhat more liberalized collecting arrangements; in other words, some system as now would be maintained rather than having a collection agency that might be responsible to both levels of government?

MR. PERRY: I think as a general rule we just found it very difficult to visualize a sort of additional, almost independent, function established in the administration field. I just find it difficult to see how it could operate. It would have to build up its own staff where staffs now exist in the administration.

DR. FORSEY: That point was one that I think was emphasized very much in the task force proceedings, that last point, by Mr. Perry, and it is down here in (b) of our recommendations.

"The necessary manpower for the

"Commission would be very scarce indeed".

If you have it somewhere now doing some of these things reasonably satisfactorily, well, all right, why create something new, in part duplicating what already exists? It is possible that some modifications to the present way of doing things may be necessary and can be negotiated, but here you are really providing for a fifth wheel approach which might well require a considerable number of spokes.

MR. STEVENSON: The reason that

proposal came out originally was because there was a prospect that Ontario might want to have its own personal income tax on a somewhat different basis from the federal government, and therefore could not get the federal government to collect it under the arrangement for tax collection mechanisms. So the proposal was that rather than having two totally separate collection agencies at the federal-provincial level, there might be a way of having a centralized collection agency which could collect taxes that had somewhat different bases.

MR. PERRY: This would mean two entities at the federal level, I think, which would be just about as confusing as you can imagine.

THE CHAIRMAN: Certainly, as Don says, this arose originally for the pure purpose of collection and simplicity in collection, and it has developed, I think, over time in these discussions into a little more than a collection agency, but there is still, I think, the prospect of the collection agency worthy of consideration apart from the broader implications of a tax commission.

PROF. BRADY: A collecting agency might be very defensible but the proposal here for a commission is a proposal for an organization that would have functions extending far beyond the collection of taxes. I think it is that side of its functions that the Committee felt very

dubious about.

MR. PERRY: The more I think of the collection agency, here is our Department of National Revenue with 30 or 35 offices across the country now functioning. What do we do? Do we set up another set of offices to collect a separate kind of income tax to be turned over to the provinces? Is this what we are talking about?

MR. STEVENSON: This proposal came out at the time when the Carter Report had been out but the Federal White Paper had not been out, and you may remember the first recommendation was that they be a Crown Corporation rather than a department.

THE CHAIRMAN: What was the purpose of that recommendation? It might help us here, Harvey.

MR. PERRY: It was not to substantially change the nature of the operation; it was, in effect, as they have done in both England and United States, to get tax collection a bit removed from politics. Any Minister we talked to in Ottawa thought that would be great, because this is very much of a thorn all the time. It was to have a revenue commission as they have in both England and the States, rather than have a Minister primarily responsible; but this meant no change in machinery, but it was just changing the top level of the Department of National Revenue.

PROF. SYMONS: Mr. Chairman, was there any other major point or rationale behind the Ontario proposal for a Tax Commission? I think it is a very practical mechanical problem of a common approach to tax collection, but I think it is something that can be solved in a practical way without getting into the governmental implications of a Commission; but was there some other reason or was it primarily that practical one?

THE CHAIRMAN: First of all, I think we should separate the two aspects, and I will ask Mr. Careless from the Taxation and Fiscal Policy branch, I think, to say a word or two about the Commission thinking; but certainly my original thought in the collection aspect was this. At the time that the Ontario White Paper on Tax Reform came out in March, 1969, it proposed a rather different type of income tax system from that which was presently employed, i.e., that there should be provision for a number of different types of tax credit arrangements according to people's income or family size, provision for perhaps tax credits for municipal taxes, and a whole number of things of that sort, and provision perhaps for building in certain premium reductions or co-ordinating premium collection for things such as Medicare and hospitalization with a single organization.

Two things followed from that. First of all, the Federal Government indicated that it would not be possible to have that within the current tax collection agreement, because of the very different type of taxation system it would involve; but, secondly, we recognized that there would be a natural criticism of a provincial government setting up a separate bureaucracy for the purpose of administering and collecting the taxes. So that the proposal was: why not have a single body which would be literally a functional collection agency? You could use the same offices and you could use the same people simply to discharge this practical task of bringing in the money. You probably would have to have two forms, but they could be sent in to the same place, and some of the practical complications might be eliminated. That was the essence of the original proposal for that purpose.

Now, over time it develops some other overtones. Would you like to review that story?

DR. FORSEY: Just before this other official comes into the picture, there are two points that occur to me here. If you are going to use the same offices and the same people, surely the simpler thing to do is to try to work out fresh agreements with the Government of Canada on this thing. It seems to me that if

you are going to have the same offices and the same people serving two masters, you are going to have a very curious affair indeed.

There are three things really. The second is: where do the other provinces fit into this thing? The third thing is: how many tax fields is this going to cover? Is it primarily going to deal with income tax, or are you going to deal with other things such as various sales taxes and this kind of thing.

THE CHAIRMAN: No, this was really for the principal shared-tax fields - personal income tax, corporation income tax; bearing in mind eventually capital gains tax and bearing in mind that if that came in the Ontario Government had indicated its intention to phase-out succession duties. So it would be those shared-tax fields.

MR. STEVENSON: There was also, Mr. Chairman, again at that point, a suggestion from the Carter Commission that perhaps the provinces with their sales tax collection machinery, might collect sales tax on behalf of the federal government.

THE CHAIRMAN: That is true.

MR. STEVENSON: And the thought was here that perhaps you could join the provincial and federal offices in that operation.

PROF. LEDERMAN: If I may just pick up the point that Eugene made and expand it a little,

our reaction (I think I am interpreting it correctly) to the application of tax collection, if I may leap ahead a bit, is on the last page of our task force report under "Written Agreements". We recommend that as far as possible the Committee discussing this report should attempt more than they have in the past to arrive at written agreements and get better and more detailed agreements about tax collection, if you wish, and let the Federal Government go on with income tax collection, let the respective provincial departments do their sales tax collection.

However, the key to success here is not a third tier of some kind, a new body, but specific agreements, ratified as the taxation agreements are now; better and more specific agreements. Then the existing departments go off and do their job under those statutes and those agreements.

MR. STEVENSON: Mr. Chairman, that obviously would be desirable, but certainly at the time this was written there was a very, very clear and flat federal refusal to collect anything but absolutely uniform taxes and there was an Ontario policy that we wanted to have a tax with a different base, so this was a proposal ---

PROF. LEDERMAN: Of course, if the federal people are unbending about this type of flexibility, then we are in trouble with this kind of proposal.

DR. FORSEY: But if they are unbending about this type of flexibility, are they going to be bending about a separate federal-provincial tax commission? I strongly doubt it.

MR. STEVENSON: They have bent a little in the White Paper.

DR. FORSEY: How much?

MR. STEVENSON: This we are not quite sure.

PROF. FOX: One degree?

MR. POSEN: It is like the other aspects of the White Paper.

DR. FORSEY: I would suspect you would find them pretty stiff on a proposal of this sort, and I am not by any means sure you would find some of the other provinces any too enthusiastic about it. This is sheer guesswork on my part, because I have not been following the thing, but it is my guess that you would find them taking a very suspicious look at this proposal to create something as a separate body. Again, either you duplicate your machinery and you have a lot of extra officials, experts and what-not; or else you use the existing officers and people and you just provide extra forms. But then the poor things find themselves answering two masters. It seems to me to involve an extraordinary amount of either confusion or duplication, one of the two.

PROF. LEDERMAN: I think as I read it (and I have only read it very hastily in the train last night) Mr. McNaughton's budget papers in this blue volume are on the right track to my mind. They are talking about operating within a uniform tax system, and that it would be a very serious thing if we cannot maintain an overall federal-provincial approach to the total of taxes and the types of taxes. I think it is important to do this.

This ties in with what I am saying about specific agreements. I think Mr. McNaughton is saying that he thinks the provinces should have more influence on what the main taxation systems are to be, what the taxation system itself is to be about. Let us have a uniform system of taxation, but let us not have it just what the Federal Government has said it is to be. Let us have some negotiation about the White Paper and the points of difference there with several of the provinces, and see if we cannot get an agreement on the overall uniform tax system and the overall tax burdens and priorities and so on. It is all in this budget paper here. If you get that type of agreement then I think collection is a much lesser problem. Then you just let the existing government departments do their job.

PROF. BRADY: Incidentally, Mr. Chairman,

I would gather that the new Quebec Government's views are similar, namely, that they are stressing getting a more effective kind of agreement with the Federal Government in tax collection and that whole area. Is that not the case?

MR. STEVENSON: Yes.

MR. SEGUIN: You have to file another return in Quebec; you file two returns in Quebec. I know, because I have secretaries in my office and I have to give them an additional T.4 for the Quebec form. Quebec collects its own directly. They deduct it from the Federal, but it means two returns; it needs another staff.

DR. FORSEY: Yes, if you get a very small payment from Quebec you get another form. I got about \$15 from somebody in Quebec (I don't know when) and it was a perfect nuisance.

THE CHAIRMAN: That is the kind of thing we are trying to avoid. What the Ontario White Paper in March 1969 said is:

"Obviously a single collection agency
"for both levels of government would be
"desirable, but recent events in Ottawa
"suggest that the Department of National
"Revenue may be replaced by a tax
"collection commission. We would
"suggest that consideration be given to
"establishing a federal-provincial tax
"collection commission as a joint body

"to serve both levels of government."

I do not have the Federal White Paper here, but when it came out, as I recall, it commented at least by implication somewhat favourably on this kind of thinking. Do we have the White Paper here? I have forgotten what they said about that in fact.

PROF. LEDERMAN: As long as it is a straight collection agency applying the collection instructions from each province and from the Federal Government, it could be a division of the Federal-Provincial Secretariat, I suppose.

MR. PERRY: This really becomes massive. The Department of National Revenue has probably about 25,000 or so employees. If we are talking about one big organization to collect all taxes in Canada, that is something else. That would be the ultimate ideal, but I have not read that this way. I sort of read this as being superimposed on the existing machinery.

MR. STEVENSON: No. Mr. Chairman, in answer to the question about Quebec, I might read just a short excerpt from Mr. Bourassa's statement to the Ministers of Finance in Quebec last week on the question of fiscal co-ordination. It is not that specific, but it does give at least the tenor of the Quebec Government's approach. It says this:

"In a document annexed to its last
"budget, the Government of Ontario
"pointed out the present weakness of
"co-ordinating machinery in the whole
"field of fiscal policy. I consider
"this to be a very grave deficiency
"that needs to be corrected as
"promptly as possible. It will not
"be enough in this particular instance
"to introduce a few improvements to
"our existing procedures and to our
"data. We must, in addition, re-
"consider all our methods in order that
"they truly meet all our needs. It
"is more than a year now that the
"Queen's University Institute of
"Intergovernmental relations submitted
"its report on the ways to structure
"intergovernmental liason in the field
"of fiscal and economic policy.
"Unhappily, this report was never studied
"collectively by those for whom it was
"written. I realize that problems of
"greater immediate interest, such as
"tax reform and the fight against
"inflation, absorbed everyone's attention.
"However, it should be kept in mind that
"the very lack of satisfactory
"instruments of co-ordination between

"governments makes it even more difficult
"to find solutions to these problems.
"We have discussed long enough the need
"for intergovernmental consultations;
"now is the time for action.

"I therefore propose that, when
"holding these next meetings, the
"Continuing Committee of Officials on
"Economic and Fiscal Matters make a
"review of the many texts which have
"been published on the subject, and
"as soon as possible suggest to us a
"comprehensive approach to this basic
"problem.

"In addition, I have often referred
"to the necessity of having inter-
"governmental consultations in the field
"of tariffs, commercial and energy
"policies. I take it that we will find
"ways to improve what already exists and
"to set up the new machinery which is
"required to permit the provincial
"governments concerned to actively and
"efficiently participate in the taking
"of decisions in these fields."

PROF. FOX: Mr. Chairman, that, though
was a statement in reference to co-ordination of
tax policies, and the prior point was on co-
ordination of tax collection.

I think, as Harvey noted, the argument that has just been recently introduced into our discussion that all of this stems originally from the notion of eliminating present tax collection procedures through the Department of National Revenue, etc., and establishing a co-ordinated federal-provincial body for collecting taxes, has a great deal of merit; but this is not the point on which we got started in this discussion, nor the point at which you approached this particular proposal here.

PROF. LEDERMAN: It is not the way it is set out here either.

PROF. FOX: No.

MR. STEVENSON: I will read paragraph 34 on page 22 and 23 of the red book.

MR. PERRY: I think it is often a matter of emphasis, because there are several of us here have read this and did not get that interpretation.

MR. STEVENSON: Exactly. That is particularly relating to income tax, but it certainly envisages just one agency and not three or two.

PROF. FOX: I see that.

THE CHAIRMAN: I will be frank to say that I think what has happened over time (this is not as clear as it could be) is that two

different aspects have become blended. The one is the collection principle and the other is really a type of thing that is talked about on page 21, which is a clearing-house of tax information, analysis of the social and economic effects of tax policies and actions, particularly with cross-jurisdictional implications.

I think really there are three kinds of things involved. There is straight tax collection. There is joint study of tax implications, ongoing joint study of tax co-ordination and inter-implications and so on. Thirdly, there is tax policy, tax interpretation of a decision-making kind, which I think is the problem that worries people as something that must (a) be always in the light of the Legislature and (b) must be something over which an individual government has ultimate control and responsibility.

Incidentally, I have found the passage in the White Paper where they did bend a bit. When our White Paper was being prepared originally, they indicated just no way of varying the base in the system at all. In the White Paper last November the federal government said in commenting on our idea that such credits might vary with income and family circumstances and might even involve net payments to those whose credits exceed their provincial income tax liability:

"The introduction of such tax credits
"would greatly complicate the tax
"return and collection administration.
"Nevertheless, the government would be
"prepared to discuss the possibility
"of carrying out such operations under
"revised collection agreements."

So they did come up that far. I don't know
whether they have lapsed back or not.

I want to move things along. Time is
running out. Is it fair to sum this up this
way, Bill, that the investigation of common
collection machinery has some merit - that is the
first point; secondly, that within the new
Secretariat arrangements some provision for joint
study of tax implications and effects has some
merit, but anything that gets into the policy
area (thirdly) or areas which involve the
responsibility of governments about its tax
policy and levying is something that is probably
impractical.

PROF. LEDERMAN: I think, to my mind,
that is a fair summary of what was bothering us,
Ian. There are two or three things in here
that have to be separated.

MR. PERRY: They got them pretty well
mixed up in this kind of thing.

MR. STEVENSON: Right.

THE CHAIRMAN: Is that fair enough?

PROF. FOX: Yes.

THE CHAIRMAN: As a question of view on it. Would you like to go on, Bill? Could I just suggest a short break for the benefit of our scribe.

--- Short recess

THE CHAIRMAN: Shall we go on, Bill, on page 6?

PROF. LEDERMAN: Mr. Chairman, I may be wrong, but I think we have covered the most controversial parts of our analysis of the Secretariat proposals and the Burns report. So perhaps I will just go through the remainder of this and I will not stop unless someone stops me. Is that fair enough?

On the intergovernmental committees of Ministers and the Continuing Committees of officials, I am referring now to our own Secretariat's proposals which are at page 20 of their document, and (e) of Appendix A.

"Intergovernmental committees of
"ministers, based on functional rather
"than departmental lines, which will meet
"at least annually;

"(f) continuing committees of officials
"to support the functional committees
"of ministers."

In item 4 on page 6, we simply agree with that. I mention that this ties in with our

proposition that what we said earlier was without prejudice to there being other intergovernmental committees - of course, the committee of Ministers of Education and the committee of Resource Ministers and so on. We did not want to put any limitations at all on arrangements for the multiplication of that type of functional committee, both at ministerial and civil service level, as required. We did add that these committees should be supported by the appropriate divisions of the permanent Secretariat, so that wherever possible the civil service support should be a division of the Secretariat. I am sorry?

DR. FORSEY: Excuse me. In the heading should it not be "Intergovernmental Committees and Continuing Committees" in the plural?

PROF. LEDERMAN: Yes, this should be plural.

DR. FORSEY: Because it is plural all the way through the paragraph and the heading is slightly misleading.

PROF. LEDERMAN: It should be plural, that is right.

THE CHAIRMAN: Any comments or are you ready to go on?

PROF. LEDERMAN: The next item 5, "Permanent Intergovernmental Affairs Secretariat",

I think with moderate differences in emphasis the Secretariat agrees with Mr. Burns and we agreed with both of them, that there ought to be a good federal-provincial Secretariat with secondment from both provincial and federal governments, and with the idea well established that this Secretariat serves all the governments at the civil service level without contradicting lines of political responsibility.

MR. STEVENSON: Would it have an independent research capacity, do you feel, or should it?

PROF. LEDERMAN: "... independent of,
"yet responsible to, all governments.
"We think it necessary to make this
"'responsibility to all governments'
"very explicit."

I would not like to say either "yes" or "no" to that. Within limits, I think. For instance, I think we did say something about a director-general appointed by the conference of First Ministers. I think it would be up to the director-general, for instance, if he can see a problem coming that is going to concern the First Ministers that needs some research activity, I should think that his senior status would be sufficient that he could get some research done in advance on his own initiative.

MR. STEVENSON: This question has

come up, I know, in connection with the Secretariat to the constitutional conference, where some suggestions have been made that it might commission some of the background work for the benefit of all governments when they come to discussions, the Secretariat has taken the position that it should not but that it should only really accept work that has been done by or on behalf of individual governments and perhaps pull that together in the form of a briefing document for a meeting of Prime Ministers.

PROF. LEDERMAN: I would say that normally they should not initiate major research programmes, but also surely the function at the senior level in this Secretariat would be to anticipate, with research and with data to some extent, problems they can see coming.

MR. STEVENSON: Your earlier section of the financial division of it implies an independent research capacity there.

PROF. LEDERMAN: Yes, the financial. Well, this would be a standard data-gathering matter. Of course, if you are going to research social implications of taxation, that, of course, is another matter. We were thinking more in terms of standard statistical assembly and analysis.

MR. PERRY: Think you would have quite a time getting into this agency research functions when they are now well established in the existing governments. In other words Bill Hood, I am sure, is not going to leave the Department of Finance and start working for this intergovernmental group.

MR. STEVENSON: There has been, though, I think it is true to say, a feeling that some governments certainly feel quite inadequately prepared at federal-provincial meetings because they do not have their own research capacity, some of the smaller provinces. They are not always happy to rely on federal research as basic background to the federal-provincial discussions themselves.

MR. PERRY: Let us put it another way: that the Ontario Secretariat is not going to move to Ottawa and become part of this group.

MR. DICK: That was the saving grace.

PROF. SYMONS: Mr. Chairman, is it envisaged that the Secretariat would recruit its own people directly and not be dependant purely upon secondment from the various governments?

PROF. LEDERMAN: I think we did mention this:

"The Secretariat should be staffed by

"officials seconded from both the

"provincial and federal governments,
"as well as by those recruited from
"outside government."

I think you have to give your director-general under the First Ministers some authority to recruit. This again would be a matter of setting up internal procedures that the First Ministers would sanction.

Perhaps as the Secretariat grew and as confidence in it grew, the conference of First Ministers might entrust them with some of those things but I should think it would start out very modestly and tread softly to start with.

PROF. MEISEL: It seems to me that for all practical purposes the whole thing turns on who is appointed director-general. If he is an aggressive guy, he will do it. I am not too persuaded by these voices of gloom about inability to get staff together. This group that you have here was not in existence four years ago, and if you had said: "Can you build up something like this?" I would have said "No, you can't". If you want to get ahead and do these things, eventually you build up your staff.

THE CHAIRMAN: Depends how important it is.

PROF. MEISEL: Surely. I think if

it is desired that this be done, then it will be done.

THE CHAIRMAN: It depends on how important it is and how much you pay them.

PROF. FOX: Mr. Chairman, I do not want to quibble about the meaning of words, but I think there is a point involved here in the bottom line of page 6. How can anything be "independent of" and yet "responsible to"? I turn this problem over to Eugene Forsey, and I am sure he can solve it for us. I am not thinking about the language, which I think is not of great importance, but I am thinking of the function of this body if it is "independent of" yet "responsible to".

PROF. LEDERMAN: It might be better to say that this Secretariat should serve all governments.

THE CHAIRMAN: Yes.

PROF. FOX: That is what I was thinking.

MR. HOBBS: I think actually we did discuss it at the task force meeting, and I think they decided perhaps "independent" was the wrong word, and something along the lines you have mentioned would be perhaps more appropriate.

PROF. FOX: I think Bill's wording is very good, if you just said "should serve all governments".

PROF. LEDERMAN: "Should serve all governments". Yes. All right. We are contradicting ourselves. "This Secretariat should serve all governments".

THE CHAIRMAN: All right.

PROF. FOX: You would have to change the next sentence.

MR. STEVENSON: Scratch it.

PROF. LEDERMAN: The next sentence can be simply taken out.

MR. SEGUIN: Do you think that its services should be "available" to all governments? I think when you serve somebody, you take his orders. "Its services should be available to all governments".

PROF. FOX: That is the problem that bothers me.

MR. SEGUIN: When you serve, you serve.

PROF. FOX: Suppose it is a creature of both sets of governments, and suppose it gets contradictory requests or orders or demands from the two sets of governments, what does it do? That is the problem.

PROF. LEDERMAN: The line of responsibility is to the conference of First Ministers.

DR. FORSEY: Yes, that is what I was going to say.

PROF. LEDERMAN: Perhaps that should be

in there somewhere too, that they serve all governments, but they are responsible to the conference of First Ministers. If they get in a box, the next federal-provincial conference of First Ministers has to get them out.

PROF. SYMONS: I think it would help, Mr. Chairman, that they should be.

PROF. BRADY: That had better be specified.

PROF. SYMONS: Responsible to the conference of First Ministers, but there is still some point when you come to a moment of difficulty and there will have to be some resolution, if you have the Prime Minister of Canada firmly in one movement and a preponderance of the provinces on another side; there is going to be a crunch of some kind, and a formula or *modus vivendi* is going to have to be worked out.

PROF. LEDERMAN: The federal-provincial conference operates on a rule of unanimity, and if the Prime Minister and the provincial Premiers cannot agree the Secretariat sits on its hands and does nothing.

PROF. FOX: When in doubt, do nothing!

PROF. SYMONS: I would hope we could find some more flexible formula that allowed action other than the lowest common denominator of everybody being in agreement, and you have

moved towards that with the idea that five provinces could convene what would formally be a federal-provincial conference.

PROF. LEDERMAN: Yes, but that is not the voting procedure for decisions at the conference.

PROF. SYMONS: No. I would hope there might be some resolution short of requiring unanimity, before the Secretariat could initiate a piece of research or carry forward some work.

THE CHAIRMAN: I just wondered, in view of the time and if we are going to have a few minutes before lunch on the Committee itself, perhaps we should just postpone this discussion and my suggestion would be that we might finish it off, together with any other tag ends which arise out of lunch, by meeting immediately after lunch in the Westbury rather than coming back here, and then we can adjourn. So that we will take this up but adjourn it for the moment.

Similarly, I think we will leave over item 4 (Ed, you can report after lunch) and come right to the question of the future of the Advisory Committee.

I think I will suggest that these few remarks be off our written record, although the staff might take notes, for the following reasons. Obviously, the future of the Committee is the prerogative of the Prime Minister, and I think

what we are seeking here is some views from you, but I do not want to appear to be pre-disposing in any way his decision.

--- Off the record discussion.

THE CHAIRMAN: We go directly to luncheon in the Cavalier Room - carefully chosen.

PROF. FOX: Where do we leave the horses?

THE CHAIRMAN: We can just resume there for a while to tidy up this agenda.

I would just like to mention one other thing before we adjourn here, in case there is not an opportunity later. As Chairman of this Committee and, I am sure, on behalf of all of us, I express both our regrets and our good wishes to Frank Callaghan who is moving out into the greener fields of the private sector. We thank you, Frank, for all the help you have given us and we extend to you our very best wishes.

PROF.FOX: Here! Here! If you ever need any constitutional advice, Frank ---

--- Luncheon adjournment.

--- On resuming after the luncheon meeting with the Prime Minister.

THE CHAIRMAN: Perhaps we can get on with other things. I would hope we could wind up somewhere in the vicinity of three o'clock. Some of you have to leave early. Bill, just

to return to your paper ---

PROF. LEDERMAN: There are just two points left here, Ian, that I do not think are controversial, but they may be. Paul Fox, who was unable to attend our meeting, put in a letter about the position of the municipal governments and we dealt with that simply by acknowledging its importance and by expressing the opinion that both the federal government and the provincial governments have neglected the problems of the municipalities up to this point, and that they ought both now to give priority to the problems of the cities; but we did not think that the right way to go about this was to give the city governments equal status with the provincial and the federal governments and to have them going to conferences as equals. We thought that they should remain under the umbrella, of course, of the provincial governments, and that they should speak with and through their provincial governments to other provinces and to the federal government. That is the gist of point number 6 there.

PROF. FOX: Could I just add to that, Mr. Chairman, that of course I did not propose that municipal governments be included as equal partners. I was merely raising what to me was an interesting point, that in a very thick report that dealt with intergovernmental liason,

the municipalities had never been mentioned so far as I was aware, but I am quite happy with your answer to my query.

MRS.CARROLL: Could I ask a question?
Could I ask Professor Lederman what we last decided just prior to this, if the word "serve" was going to be placed there and if that last sentence was going to be deleted.

PROF. LEDERMAN: This is in item 5.

MR. HOBBS: Just with regard to the question of the word "independant". I think at the task force meeting it was suggested that the words be something along the lines of "take their instructions from and answer to" the meeting of First Ministers or all governments.

PROF. LEDERMAN: I think what we decided just before lunch was that we should say that the Secretariat should serve or make its services available to all governments, and that they should be responsible to the conference of First Ministers.

THE CHAIRMAN: I think that is as well as you can do, frankly.

PROF. LEDERMAN: I think that does it. Then the next sentence is simply removed because it then becomes unnecessary.

"We think it necessary to make this
"responsibility to all governments'
"very explicit."

That whole sentence ought to come out; take that out entirely.

The final point, "Written Agreements" is just the point I made a few minutes ago about the more complex things get the more valuable it is to have written agreements and documents which can be referred to. You might even get on to the question of arbitration machinery and so on about differences of opinion. There has already been the occasional arbitration over the Dominion-provincial financial agreements where they disagreed about the calculation of population and this kind of thing on which the things depended, but that is minor.

I think it is worth saying as much as we have said here, that the federal-provincial intergovernmental machinery ought to think in terms of producing more in the way of inter-provincial contracts or treaties that are carefully composed and written out. It cannot be done on the old tea party basis any more.

That brings us to the end of this report.

THE CHAIRMAN: Are there any other questions about the report? I think that summarizes it and covers it rather well. As I indicated, we will have this as a solid input to our work in preparation for September.

Arising out of the discussion we had at noon, I think there are two or three practical considerations we should have about the work of the Committee. I think a good and useful introduction to that would be in fact the other item remaining on the agenda, which is a brief review of the events since the last meeting, Ed. I think by implication we have covered a lot of what you might have said, but perhaps you can give us a brief synopsis of any points that remain.

MR. GREATHED: Mr. Chairman, I am in the happy position of having had someone else, in fact the Prime Minister, give the report; but, just very briefly, for members, since we met last March 20th we have had a variety of meetings, including two Continuing Committee of officials meetings in Ottawa and Banff in March and June; two meetings of the sub-committee on fundamental rights in March and June, both in Ottawa; a meeting of the sub-committees on succession duties and sales taxes in April; and in May a meeting of the ministerial committee on official languages.

As we look to the next few months, an equally busy period can be forecast. In fact I think many of us are wondering what is going to happen to the vacation period, as some people were mentioning today.

In late August, we are going to have the ministerial committees on fundamental rights and the judiciary meeting. We are going to have a further meeting of the Continuing Committee of officials just two weeks prior to the working session of the constitutional conference which, as Mr. Robarts indicated this afternoon, will include one day on non-constitutional issues. We suspect that by the end of 1970 there may well be a public session of the constitutional conference.

This is merely the activities on the constitutional review side. David, would you just care to mention very briefly what is going on on the functional side, which may give the members some idea of the pace of activities and the kind of issues that we are having to consider.

MR. HOBBS: Since April 15th there have been eleven different intergovernmental meetings, at least eleven or a couple more that perhaps we are not aware of; but these have included such things as the Health Resources Advisory Council, Dominion Council of Health; a meeting on part III of the National Transportation Act; a group called The Canadian Agricultural Services Co-ordinating Committee; Canadian Association of Administrators of Labour Legislation; Co-ordinators of the

Canadian Council of Resource Ministers and the Canadian Council of Resource Ministers. In the next few weeks there will be the Deputy Ministers of Welfare, Canadian Conference of Motor Transport Authorities, Ministers of Agriculture, and leading up to in Winnipeg on August 3rd to 5th, the Premiers' conference.

So that you can see there have been a fair number of meetings covering a fairly wide variety of different topics that are of concern to the provinces and the federal government.

MR. GREATHED: I might just add, Mr. Chairman, though I think it is self-evident and it is a pretty full agenda, a few words, some of which were briefly touched on a few minutes ago, on the constitutional review side, to which perhaps yourself and Don can add any comments that you like to make.

It may be helpful, I think, to recall for the members, as Dr. Brady mentioned a little while ago, that we did begin with the proposition method; that we moved off this level of what, I think, was a useful generality, to the specifics of the spending and taxing powers. Then late last year we commenced the detailed work on the distribution of powers. You will recall that the December conference considered the first major area that we had

agreed upon, namely income security and social services.

Since this Committee has met in March, we have moved into two other major areas of the distribution of powers, namely economic growth and environmental management.

It is quite clear, just from the Prime Minister's comments and some of the comments that members have made here, that these continue to be very large and complex areas, and they have raised and, I think, continue to raise, some very difficult procedural questions on which we will certainly hope to get some benefit of the Committee's observations.

I suppose, Mr. Chairman, it really does come down to the question of how you reduce all these extremely large topics to manageable terms for ready political discussion and decision. When you add to that other factors which we have experienced in the constitutional review, such as a growing agenda, an accumulating agenda of items, the question of the pace of the review, the pressing functional problems which you discussed with the Prime Minister this afternoon, the problem of tax reform, wheat surpluses and so on - I think perhaps you will have some idea of the dimensions of the problem we are dealing with.

I know, Mr. Chairman, speaking for the

staff of the Secretariat, that we would find it enormously helpful if we could have some very specific suggestions, as the Prime Minister requested, from this Committee on how you approach the process of this review; what is the best way of handling the various items with which we are dealing, because they are not now small specific items, but they are very large questions encompassed in these terms of economic growth and environmental management and so on. So I just leave it there,

Mr. Chairman.

THE CHAIRMAN: I hope I can round this out fairly readily by the following approach. It seems to me there are three practical questions emanating from the noon hour discussion, that require some action.

First of all, I think the Prime Minister made quite clear that he wants a Committee to continue. (I will come back to these in greater detail after looking at them in general) So there is the Committee.

Secondly, I think he indicated he would like the Committee to think of what relationship, if any, it might have to the Committee of the Legislature that is being established.

Thirdly, he asked for your assistance and comments and points of view on the procedural approach to the constitutional review; also the

question of priority areas for attention.

I would propose the following. First of all, I think I will see in the next little while if I can arrange to have the Prime Minister write to each member of this Committee, including those who are not here today and who were not involved in the discussion, to indicate as he said today, that he would like a Committee to continue, but to leave the option open to any individual (and frankly there have been one or two who have expressed to me a wish to retire); to leave the option open to any individual to continue on the Committee, in the hope that they will, or to indicate frankly if for any reason he does not wish to. Also it would be very helpful - and we have one or two names of people whom we have canvassed who I think would be good additions to the Committee - to suggest names of any people that they think might be good additions to the Committee. I think this covers all the delicate ground, and in this way we will have a committee. It is clear that that is the Prime Minister's wish, but also that I did mention during our lunch hour conversation the discussion we had this morning and the nature of it, which will leave anyone free to step aside without any feeling either that he is being shoved or that he is leaving the ship.

Finally, give us some suggestions for new additions and reconstitution perhaps of the Committee to carry on through the next round.

That is the first suggestion I would make. Does that seem a reasonable approach to you from the discussion we had?

Then secondly I think I would like the Secretariat to prepare a letter, perhaps even in the form of a questionnaire, to the members of the Committee, which might ask some questions of you, which you could answer fairly briefly, about the possible ways or anticipated possible ways (perhaps we cannot anticipate and it is too much) that this Committee might be asked to assist or that it might assist in the work of the Legislative Committee; also inviting any other comments or any other cautions you might wish to make.

I think we will have to play this by ear. I think you have a little time. Obviously the Session is adjourning in a week and it will not resume until some time in October, so that there would be time to think one's way through that process without undue haste; but to elicit some comments from you on that.

As a practical proposition, perhaps on the third point, we have this problem of people having various plans for their vacation, when some are here and some are there, and it seems

to me it would be very difficult ever to convene the whole Committee during the summer.

However, Ed, it might be useful, I think, perhaps to treat the whole Committee as a Committee of the Whole; and thereby to convene a committee-of-the-whole task force, as it were, from time to time during the summer to work with our federal-provincial affairs Secretariat in looking at what has gone on so far in the constitutional review, and to look at some of the questions of the work that we are doing in priorities - work leading to perhaps a meeting of this Committee in the week before the constitutional conference and some report on it. We will look at that timetable in a minute, but this one is a little harder for me to put into shape. Perhaps you can give me some help on the methodology here.

MR. GREATHED: Mr. Chairman, I presume by a meeting of a Committee of the Whole, you mean those members we can round up?

THE CHAIRMAN: Those members you can round up or who can come whenever; in other words, who are there to help advise us as best they can in the time available. I would like to have some serious input to this.

PROF. BRADY: May we have a statement summarizing really what the Prime Minister said about what the federal government is expecting

to discuss at the next conference? That was clearly expressed, but those of us who did not take adequate notes readily forget all the points, and it would help if we could have a brief statement.

THE CHAIRMAN: We could prepare a background briefing document for the Committee.

I am now going to propose, in the hope that he might be available during the summer, because I think it is useful for me, as Chairman of the Committee, to be one step removed perhaps from what comes up; I was rather hoping, Professor Brady, that you might be available enough in the summer to be chairman of the Committee of the Whole, with the help of the Secretariat in anything you need in arranging meetings and so on. Would you be generally about for a while?

PROF. BRADY: Most of the summer, but I was hoping to get away.

THE CHAIRMAN: Let us understand that no one is to be bound about changing his plans at all, but I thought Professor Brady may be at hand and if he would be good enough to be the presiding officer of the Committee of the Whole, as available, then that would be a great help to me and to the Committee in turn, if they were agreeable. I know the Secretariat would look after arranging meetings, of course, and

so on.

MR. STEVENSON: Mr. Chairman, there are three or four papers that we got in the last week or so, and I know a couple to which I would like to see the reactions of the Committee members.

THE CHAIRMAN: This is what I think the Secretariat should look at with Professor Brady, is an approach to the work and the most expeditious way we can put all that in the mill.

DR. FORSEY: You don't mean, that have been sent to us already?

MR. STEVENSON: No.

THE CHAIRMAN: Just received.

MR. STEVENSON: They were just received, and we could send them to at least some of you.

THE CHAIRMAN: As a practical matter - and I think these dates should be treated as confidential because they have just come in in this letter which the Prime Minister referred to and have yet to be agreed upon, although I think most governments are expected to agree to it, the dates are September 14th, 15th and 16th; and that means, as a practical matter, that if we are going to be of service to that meeting we should be in a position to meet some time in the week preceding. I do not know how difficult that week is. Labour Day is Monday, September

7th and I guess some of the staff may want to be away at the Institute of Public Administrators, but as a practical matter I do not think many people on the Secretariat are going to get away because of the preparations for the conference.

It would seem to me that we might well have a meeting, if only for a morning or an afternoon, to deal with the work of the task force of the Committee of the Whole, some time on the 8th or 9th, whichever date might be easier for most people here. I don't know if these dates are going to be even possible for anyone to be here. In other words, right after Labour Day; and perhaps, if travelling is easier, if some are away for that weekend, perhaps the morning of the 9th might be a little easier. It is still far enough ahead to help us with our preparations - not much, Ed. Or do you think the 8th would be better, the afternoon of the 8th?

MR. GREATHED: It is really what people think.

THE CHAIRMAN: What is the sampling of opinion here?

PROF. LEDERMAN: Talking about Tuesday and Wednesday, September 8th and 9th?

THE CHAIRMAN: Monday being Labour Day.

PROF. SYMONS: Afternoon, evening or

morning; may we leave that much?

THE CHAIRMAN: I can see us using a good chunk of a day. I would hope that whatever combination of afternoons or mornings or evenings facilitates travel or cuts into your work the least.

MR. PERRY: I would just as soon have the whole day of Tuesday in my office, of course.

THE CHAIRMAN: I would rather think that, because after a long weekend things pile up. How about the morning of the 9th and holding part of the afternoon if necessary? We had better notify the other people.

MR. GREATHED: I will send a letter to all members, just confirming all this.

THE CHAIRMAN: All right.

PROF. LEDERMAN: When one comes from out of town, it is the whole day anyway, so for the out-of-townners it doesn't matter.

THE CHAIRMAN: I suppose not.

PROF. SYMONS: You think the morning of the 9th?

THE CHAIRMAN: The morning of the 9th and perhaps part of the afternoon of the 9th. I am going to be away myself until just before Labour Day. I imagine others may be too.

MR. PERRY: Mr. Chairman, this would sound like an outrageously irrelevant question,

but what is the object of our exercise? Are we working towards constitutional amendments in areas of immediate urgency, or simply areas of immediate urgency which have federal-provincial implications? Because, literally, in the field of taxation I can think of no really vital constitutional issue. There are some which you could make, but they are not fundamental.

THE CHAIRMAN: I think it would be useful, as a combination of those in the government and those of you outside advising, to perhaps sort out some of the areas that appear to be most vital and urgent; secondly, to consider (which I think would be an important point for the constitutional conference) which of them can only be dealt with constitutionally, and which of them can be dealt with with a will to get on with the job. I think that will be very important for the September meeting, because that meeting is a curious one. The first two days are to be on constitutional matters, and the third day is to be on non-constitutional matters or the ongoing problems. As a result, I think that may well bring into juxtaposition very nicely this whole question of what can we do with the will to do it, and what can we only do with the constitution. If we could clarify, take the whole terrain, if it is possible, and sort it out and clarify which

fits where, I think Ontario could go to the conference with a background paper which would be a very hard and practical contribution.

MR. STEVENSON: Then we know, Mr. Chairman, that there will be two specific federal papers that we have not seen but will be given to us some time soon. One will be a federal position in the whole realm of environmental management, where we got a highly technical description of what might be needed but it was not too much help though it particularly covers resource development, pollution, urban regional planning and the like; and we also know that we are going to be given, probably just before the end of August, a federal paper on capital markets. We did get the information that it would probably be divided into the following four parts: one on the trading of securities; secondly, on monetary policy and credit conditions; third, on the control over credit, terms of credit, including jurisdiction over insurance companies; fourth, creating and regulating financial institutions.

MR. GREATHED: Mr. Chairman, if I might just add to what Don has said and really in answer to what Harvey has raised, I think we have probably two separate problems here. One is that part of the Ontario preparation for the September conference will have to include a paper

on the process and priorities and so on, and this is what we are discussing now. The second part of the Ontario preparation, if you will, will have to concern itself with those items that are on the agreed-upon agenda, some of which Don has mentioned, and others of which are listed in Mr. Trudeau's letter.

So that it seems to me we have two very separate matters we are dealing with.

MR. STEVENSON: Included among the others is this question of paramouncy again, which came up in the income security thing. I was hoping there that we might get some help from Professor Lederman in particular on the question of paramouncy which came specifically from the discussion of public pension schemes, but obviously is the introduction to the more general question of paramouncy in concurrent fields.

Another, which will not take up much time, I do not think, will be the regional disparities question; but at least we did work out some kind of communique this week on where we were on that.

The third will be reports of committees on death taxes and sales taxes. Here what we have are reports which at least set out the different positions and the reasons for them. In sales taxes, for instance, there was quite a

difference between the Ontario position, which was that if you believe in access and you present a position of access to tax fields, then you should have in the constitution as wide and as flexible an access to tax fields as is possible, and then limitations by agreement or by discussion; and the federal people have come to the conclusion, supported by some of the provinces, that any provision that would give the provinces access to the indirect sales tax field must be limited to the retail level.

In the death tax field there is a similar situation, where they would permit provinces into the indirect field in the death tax area, provided that any indirect death tax by the province was related to domicile and not situs; so that part of our present direct tax effort would be prohibited to us, while we would get access to a portion of the indirect field.

MR. PERRY: But these all have a constitutional context. John Meisel was referring broadly to the economic problems. I suppose one of the most significant recent economic events was the freeing of the Canadian dollar. This has no constitutional aspect at all; nor has inflation up to a certain point.

Are these on the agenda or are they not? Is inflation on the agenda?

DR. FORSEY: I thought that monetary

policy was in there, was it not?

MR. STEVENSON: But the distribution of powers in relation to it.

DR. FORSEY: Yes.

MR. STEVENSON: And the federal people have been very, very careful not to permit discussion on policy ---

DR. FORSEY: No, no.

MR. STEVENSON: -- to get into the constitutional discussion.

DR. FORSEY: Quite, but I would assume there would be some discussion there of the kind of thing that Lesage surfaced some time ago, that the provinces wanted a say in various fields which had hitherto been considered the sole jurisdiction of the Dominion - tariff policy, monetary policy and so forth. So in that case there might be a constitutional aspect even to this.

MR. PERRY: Yes, once you get into that sort of area, Eugene ---

DR. FORSEY: I would hope you would not get into it.

MR. PERRY: The whole world is your horizon there.

MR. GREATHED: I think on the non-constitutional side, on the day that we spend on that, it is fair to say that the agenda Mr. Trudeau has proposed is a tentative one to

be firmed up later on. I think what he is doing is canvassing the opinions of the Premiers as to what their views are as to the exact composition of items on the last day.

THE CHAIRMAN: I think in answer to Harvey's question, we look at the catalogue of questions, and we certainly filter out those that are only, as I say, perhaps going to be dealt with constitutionally and the others which will be dealt with under the present arrangements and, I think, give them some order of priority.

It seems to me, Harvey, one would exclude perhaps those matters which are already being worked on in some urgent way, such as the constants to the exchange rate change, or the Prices and Income Commission, probably other problems such as environmental management or co-ordination of the securities markets and so on.

MR. PERRY: I was just hoping this was the answer you were going to give. Otherwise this turns into a perpetual economic debate.

THE CHAIRMAN: We would have to filter these down pretty well, and I think ~~that~~ would be the first task of the Committee, to limit itself.

MR. POSEN: Certainly one of the problems that came up with income security and social services. The federal government said: "This is a constitutional discussion, and we will

only discuss it in constitutional terms. We do not wish to discuss our social welfare policy which will be in a White Paper on social welfare, which is something totally different."

Again, on environmental management, they said: "We are not interested in discussing the Canada Water Act, its effect on you. That is a policy question. We want to discuss what constitutional role we should have in the future." I think this is sort of the nub of the problem, the procedural problem. People say: "Look, if this is the policy you adopted in the Canada Water Act, we will be damned if we want to give you any constitutional rights in this field or perhaps we like the policy and you should therefore have more."

One's appreciation of the constitutional issue, I think, is very coloured by the every day issues, and they tend to get tied in together, and the federal people are always trying to untie it.

THE CHAIRMAN: By the Canada Water Act we may be "dammed" in more ways than one.

(laughter)

PROF. LEDERMAN: One can emphasize one side or the other, but one can never separate the two. If the constitution is going to be functional and serve the people, you have to pursue it to what it permits the governments to do or

fixes them with the responsibility for doing, and that gets you right into what their policies ought to be.

THE CHAIRMAN: I wish you good luck on this exploration.

PROF. MEISEL: There is one other point, and perhaps this is totally impractical, but the Prime Minister mentioned the repatriation of the constitution. I wonder whether we should just leave it at that, or are we going to look now at whether there is a new situation to some extent, whether we should not at least look at this and see whether there might be some ---

THE CHAIRMAN: Yes, you are right. There was another point that came up.

PROF. SYMONS: Yes.

THE CHAIRMAN: Again, it is a question of time. If members of this group could fairly readily sort out some options or advice on that subject, certainly it is a theme that the Prime Minister of Ontario has raised at every conference, and one that he feels, both symbolically and practically, ^{it} is important to get on with.

PROF. BRADY: That is not a question that will be discussed in September.

THE CHAIRMAN: No, it is not on the agenda unless some province asks that it be on.

PROF. FOX: Ian, I was a little

surprised that the Prime Minister raised that. I did not realize that that was a subject in which he was so interested. However, in view of the fact that he did raise it spontaneously on his part, it indicates to me that it is in his mind and that he might want to bring it forward in September. It seems to me that compared to some of these other problems it is a relatively simple one. It is one that some people here have been over and through in great detail, and maybe what would be appropriate there, and relatively simple, would be for you or Dr. Brady as acting chairmen to try to get together members of the Committee who are interested in this, and spend a morning or a day or whatever on it. I really do not think that unless you go back to square one and start all over again, that there is a great deal that can be added to it, but I think I recall that conversation we had one day in the Committee some months ago about it and some of the things that were involved. I think Eugene and I had a difference of opinion on whether it was tilted in favour of the federal government and so on, and I remember that Frank Callaghan and, I think, Rendell Dick got into the argument; and I do not think we resolved that point. I think there are a few things, in other words, that might make it

worth while for members of the Committee, if you wanted to have a meeting, to meet and spend at least one day on, simply to have it prepared in case it comes forward.

THE CHAIRMAN: I think we should have a background.

PROF. MEISEL: We should, because although it may not come up in September it may be that at that time he might want to try to talk to Schreyer to feel him out.

PROF. FOX: That is right.

THE CHAIRMAN: We will arrange to put together a group on that one and knock it into shape. I think it can be done fairly readily.

MR. GREATHED: Do you see the September 9th meeting as being the quarterly meeting of the Committee?

THE CHAIRMAN: I would think so, subject to other exigencies.

I guess we can adjourn then formally until that time. Thank you very much for coming today.

--- The meeting adjourned at 3:20 p.m.

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ONTARIO ADVISORY COMMITTEE ON CONFEDERATION

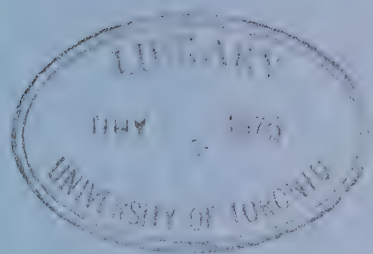
M E E T I N G

at

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on

WEDNESDAY, SEPTEMBER 9TH, 1970



VERBATIM REPORT OF PROCEEDINGS

ONTARIO ADVISORY COMMITTEE ON CONFEDERATION

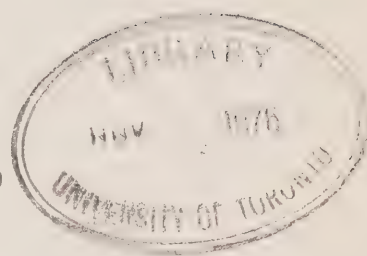
M E E T I N G

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T O R O N T O

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WEDNESDAY, SEPTEMBER 9TH, 1970



VERBATIM REPORT OF PROCEEDINGS

ONTARIO ADVISORY COMMITTEE ON CONFEDERATION

Meeting held in the Board Room, 6th floor,
The Frost Building, Queen's Park, Toronto,
on Wednesday, September 9th, 1970.

PRESENT:

Mr. H.I. Macdonald (Chairman)

Prof. A. Brady

Prof. J. Conway

Dr. E. Forsey

Prof. W.R. Lederman

Mr. J.H. Perry

Prof. T.H.B. Symons

Mr. A.R. Dick

Mr. D.W. Stevenson

Mr. E. Greathed (Secretary)

Mr. N. Mailhot)

)
Mrs. L. Bowen) Secretariat

)
Mr. D. Bruce)

(Formal "regrets" received from Messrs. Creighton,
Fox, Gathercole, McIvor, McWhinney, Meisel and
Seguin)

--- At 1 p.m.

THE CHAIRMAN: We have a small group today. I hope no-one was inconvenienced unduly by the change of plans at the last minute, but when I got back yesterday and had an opportunity to review the agenda it seemed that we were going to have a lot of time to cover a few items; and since the reception for the presentation of the book was this afternoon at 4 o'clock, it seemed perhaps a better use of time to have the meeting in the afternoon preceding that, rather than having you idle in the interval. I hope that has not caused too many problems.

We thought we would work through today the items in the same order as they are placed for the agenda next Monday and Tuesday at the next Constitutional Conference which, as you know, will be a closed session: that is, the constitutional review process, in which there will be some consideration of the method of review itself: then the main business will be two papers, one on the capital markets and financial institutions, and the other on environmental management. Then there will be reports from various committees on work that has been going on in sub-committee -- official language, sales tax, death duties, regional disparities, and paramountcy as applied to public retirement insurance.

In the interval, work has gone on here in preparation for those meetings, and I thought there

were two matters of business that I might ask Mr. Greathed and Mr. Stevenson to report on -- first of all, the plans for the publication of the book and the reception this afternoon; secondly, a report on the work that has gone on since the last meeting and, in particular, the activities of the Continuing Committee of Officials which met last week.

MR. GREATHED: Mr. Chairman, just before I make any comment about the reception this afternoon, I would just like to take this opportunity to introduce to the members here, most of whom have probably met him, Mr. Norman Mailhot, who has come to us from, as one friend of mine described it, the "department of eternal affairs". Norman was over in Hong Kong before he decided to trade that for Queen's Park. We are very happy to have him here, and he has been with us for a couple months. I am sure you will be seeing more of him as time goes on.

With respect to the programme this afternoon, the reception will be in Room M.1.691B.

MR. DICK: You will never find it!

MR. GREATHED: Which is the computerized code for the McDonald Block, the McDonald Block being the first new building right behind us, the entrance of Grosvenor Street.

PROFESSOR CONWAY: Will you lead us there?

MR. GREATHED: This may present a bit of a

problem. It will be in part of the cafeteria. When you go in the entrance off Grosvenor Street, there is an information booth with a girl there, and apparently the whole thing is signed, so it is very clear where the O.A.C.C. press reception will be.

MR. STEVENSON: Ask for the cafeteria.

MR. GREATHED: Well, just ask the girl where the press reception for the Advisory Committee is.

PROFESSOR BRADY: That is on the ground floor?

MR. GREATHED: It is on the ground floor, yes. The arrangements that will be made for the press reception are as follows. The Chairman will be asked to begin by introducing the members present. He will then invite the press to have some food and coffee and so on and to talk with each of you as authors and contributors to the O.A.C.C. volume.

We have been informed that three hundred invitations have gone out for this reception. How many will actually show up is another matter. The press gallery at Queen's Park, the information officer in various Ontario Government departments, all local radio and television stations, and all other media including every single newspaper in Ontario, has been informed of this particular event, so that there will not be much question of

people not knowing about this particular event.

MR. PERRY: How many days is this reception going on?

MR. GREATHED: Well, the reception is due for two hours, and we will see how it proceeds from there.

THE CHAIRMAN: What did it say on the invitations by way of refreshments? From that you can judge how many there will be there.

MR. GREATHED: Yes, that questions did arise. Lisa, could you tell me how that was disposed of? Did we opt for coffee?

MRS. BOWEN: I think coffee has been opted for, but I don't think that was mentioned on the invitation.

THE CHAIRMAN: If you didn't say "drinks" there will be about twenty people there.

MR. DICK: That took care of our press gallery. (Laughter)

MR. GREATHED: I might add that in about three-quarters of an hour I am expecting the first 25 copies of the second volume. There will only be 25 copies available today. We want to get these in the hands of the newspaper people, and I would ask that the members wait until next week, when we will have copies to send to them, but until next week I don't think we will have copies to distribute to individual members.

I might add that this is what the dust

jacket looks like. This is over copy of Volume I. Both volumes will have this grey dust jacket with the over-title "The Confederation Challenge". This is a pure marketing device. We had to resort to this because the marketing people told us that "background papers and reports" was not exactly a hot seller. (Laughter)

PROFESSOR SYMONS: I think that is a very swinging title. I haven't heard of any other background papers and reports for years.

MR. GREATHED: Unfortunately a lot of the public haven't, either. However, the only difference will be, of course, that Volume I on the spine here and Volume II on the other spine. The book will be a blue cover, and the title "Background Papers and Reports" will be on the page where it really counts, the title page where librarians look so that "The Confederation Challenge" will be ignored. That is to lure people into the Ontario Government bookstore on Bay Street to purchase this volume.

I think, Mr. Chairman, that is probably all I have to say about the reception this afternoon, unless members have any questions.

I might just add that two of the former members of the Committee, Dean Dillon and Father Matte will be present at the reception. We did invite all former members of the Committee. Mr. Magone was not able to be here. Mr. Laskin had a

death in the family to attend to. Mr. Atke, who is not a member of the Committee but is one of the contributors to the volume, will be at the reception. Mr. Watts of Queen's could not come, although he was invited. So we made sure that everybody who was connected with it was asked, and some of them will be there.

THE CHAIRMAN: Just one point on procedure. After I have introduced the Committee and said how happy we are that everyone is there, etc., is it the intention to have a formalized press conference, or would the members just mingle with individuals?

MR. GREATHED: What we are hoping is that we will not have a formal press conference; that in fact you will just get up and I hope the members will not be drawn up in a formal line by the Chairman, but just standing around, so that the press can simply come and speak to individual members and ask them about their contributions.

I might add, of course, that none of them will have read the book, and you will probably have to explain the gist of what you said in your article or any other matters that you think will result in lavish press attention.

I think that the idea, as I understand it (and you can correct me on this) is to make it as informal as possible.

I was telling your Chairman yesterday evening that they are going to be playing on one wall

a projection (I guess it is a film projection) of scenes from paintings of the Fathers of Confederation and some scenes from contemporary Ontario and so on. I think this is something to be displayed on the wall during the couple of hours that we will be there.

THE CHAIRMAN: I came back from vacation yesterday, and I accept no responsibility for anything that happens there this afternoon. (Laughter)

PROFESSOR LEDERMAN: What will happen with coffee will be different from what would happen with gin. (Laughter).

MR. DICK: At least get reasonable over the whole thing.

MR. GREATHED: If there are no questions on that ---

THE CHAIRMAN: Perhaps we can have a member of the staff here who can take the group over.

MR. GREATHED: I will ensure that.

THE CHAIRMAN: To make sure everyone knows where to go.

PROFESSOR SYMONS: Could I just ask, Mr. Chairman: I think this is the first occasion in six years that the Committee has had a public face or personality and I wonder if you have some clear instructions about all the things that we are not to say or do?

THE CHAIRMAN: No, I think we will follow the traditional pattern that members are free to

perform in their individual ways, as they always do.

PROFESSOR SYMONS: As bad as that?

THE CHAIRMAN: I will make clear very simply in the introduction again what has gone in the preface of the last book and of this book: briefly a history of the Committee, the responsibility of the members as a part of the Committee, but the manner in which they are individuals with their own opinions and their own role.

The other matter to report was to bring you up to date on the state of work in the Constitutional Conference and, in particular, the activities of the last C.C.O. meeting. Ed, are you or Don going to comment on this?

MR. GREATHED: Mr. Chairman, again, we spent the bulk of the meeting of the Continuing Committee of Officials going over draft reports which had been prepared by the secretariat to the Constitutional Conference for the Prime Ministers on each of the agenda items. This, as I say, took substantially the bulk of our time when we were down there, and was not a particularly controversial process.

I think the one area in which we did look fairly critically and have a more widely ranging discussion on the issues involved, was on the capital markets and financial institutions. Don, you led our delegation on that at that time, and perhaps you might want to say something about the kind of issues

that we looked at when we were there.

MR. STEVENSON: Has everybody a copy of the report or have they seen it?

MR. GREATHED: I would hope most members do. Most of the members here were members of the small group we had over the summer helping us out under Dr. Brady's chairmanship. Am I right in saying that all members here have copies of the "Capital Markets"?

PROFESSOR CONWAY: I haven't.

MR. GREATHED: The mail has failed us. We will make sure you get one.

MR. STEVENSON: Briefly, the federal paper which we received just three or four days in advance of the meeting of the civil servants a week ago in Ottawa, was the next in a series of papers on various aspects of the distribution of powers; and since most of you, I would hope, would have a chance to read it, I will not really go through it.

The bulk of the paper describes the workings of the capital markets in Canada, basic institutions and forms of regulation within it; the current constitutional position in regard to financial institutions, their regulation, the securities market and banking and credit.

Then the key element of the federal paper is from pages 14 to 18, where they have a series of proposals for change.

Page 14 to the top of page 15 sets out some

half dozen basic objectives behind the federal position.

Pages 15 and 16 in the field of currency, banking and credit, essentially summarized is that the Government of Canada believes that the current provision on banking under Section 91 is adequate to give the federal government effective control over the currency, banking and monetary conditions, but that the federal government is prepared to see jurisdiction over savings banks transferred to the provinces from Section 91. This would not involve, as we understand it, very much in the way of actual change in the existing institutions, probably covering the Montreal City and District Savings Bank and the various provincial savings offices as we see it.

In the area of credit, the federal government has proposed concurrent jurisdiction over credit, with provincial paramountcy for most purposes but with federal paramountcy where the federal legislation is made for national economic purposes.

Under the section on financial institutions, the federal government proposals are similar to their proposals in the securities market where they would essentially take a geographic division between federal and provincial jurisdiction. The federal government believes that in a revised constitution Parliament should have exclusive power to regulate financial institutions other than banks which carry on business

in two or more provinces or internationally, and the provincial legislatures should have exclusive power to regulate financial institutions other than banks which carry on business only within the province.

Then in paragraph 67 they go into some detail on this, keeping always the proviso that the banking operations of any non-banking financial intermediary or financial institution would still be subject to federal law, although they again say that they would not imagine that this would be applied, at least in the first instance, to operations such as credit unions and caisses populaires.

They have the basic proviso that the proposed change in the power to regulate institutions as such is not intended to change other powers already in the constitution expressly or by interpretation relating to activities or contracts that such institutions would undertake.

On the securities market, the basic federal recommendation is similar to that on financial institutions. It is proposed that in the revision of the constitution that Parliament should be given specific powers to make laws relating to sales of securities from a vendor residing in one province to a purchaser residing outside the province, and relating to issues of securities which are not restricted to sale only to purchasers residing in the province of issuance.

It is also proposed that it be made clear that Parliament may legislate in regard to sale of securities of federal origin and the purchase of securities from vendors outside Canada.

The discussion was largely based on an attempt by provincial delegates to find out a great deal more in the way of specifics as to what kind of implication or interpretation various of the proposed changes would have in the federal paper. A great deal certainly hinges on the kind of definition that would be applied to terms such as banking, credit, and "carrying on business" which has been a problem of geographic definition in many fields for a long time; and also to try to separate out somewhat current federal proposals for legislative activity and long-run constitutional change; and, as in two or three of the other fields, the discussion seemed to get mixed at times because although Mr. Bryce, who had been the basic author of the paper and was chairing the discussion, was, I think, clearly dealing in longer term constitutional matters, he was flanked by people from the federal Department of Corporate and Consumer Affairs who were very much fresh from and concerned with proposed federal legislation in the securities field and some current problems of jurisdiction between the federal and provincial governments.

The provinces also were trying to probe the federal delegation as to the extent to which the

federal people believed there were now imperfections in the capital market and serious problems that needed constitutional change to accomplish their alleviation.

I am not sure what is the best way to go about it, but I would suggest perhaps we might want to carry on through the recommendations section, perhaps with a brief period covering the first fourteen pages, if anyone has any particular points they wish to raise on them.

THE CHAIRMAN: Could I back up a minute. What opportunity did the summer task force, Professor Brady, have to get into this paper which arrived rather late in the month of August, did it not?

PROFESSOR BRADY: We did not go into this paper at all.

THE CHAIRMAN: Your work has been on the environmental paper?

PROFESSOR BRADY: Yes. Well, we were waiting for the federal papers to appear, and then when in mid-August there did not seem to be a prospect of their appearing soon or before the end of the month, we held a meeting on Monday, 24th August, when we did not have this paper, and neither did we have the general paper that is promised evidently and which is not going to be submitted at all, is it?

MR. GREATHED: That is correct, Dr. Brady. We have not received that paper from Ottawa, and in fact they told us that it would not be ready for the

C.C.O. meeting, nor even for the prime ministerial meeting.

PROFESSOR LEDERMAN: This is the general paper on economics?

MR. GREATHED: No, this was the general paper on environmental management, the long paper on environmental management. What we got from them and what I hope all members received, was a 15-page outline suggesting the areas which they were going to look at, but it really was not very helpful in terms of having a solid discussion.

PROFESSOR BRADY: The federal papers we got were not helpful, except for the paper by Dale Gibson which was a very good informational paper and, I think, the survey by Dale Gibson which illustrates some of the problems that arise. So we did not really have a discussion of these documents that will emerge in the conference of the Premiers and Prime Ministers.

What we did, we held a meeting on the 24th which really dealt with what was assumed to be (with reasonable accuracy, I suppose) the agenda for the conference in September, and that was a general discussion. I do not think I need to try to survey it. As a matter of fact, if you asked me to summarize the gist of it, I couldn't do it. It was a discussion that conforms with what is described, I think, as un-structured, to use a word that is now devoutly blessed in certain

educational circles. In other words, it was not planned to lead up to any special consensus or conclusions; rather, it was intended to bring out some of the basic points about the theme or themes, and the technique of question and answer was followed.

I think there were only three members present. The 24th August was, after all, not a most fortuitous date in view of vacations, in our group of the task force, and there were only three of us present from the Advisory Committee -- Professor Lederman, Dr. Forsey and myself.

I think that all those who took part in the discussion were impressed with the need to make clear the meanings of terms that were involved in these discussions and that are freely bandied about even by such august people as Premiers.

We were also all impressed, I think, by the fact that in the constitution there is more than at first meets the eye, when one thinks of the modern industrialization and technology which, after all, is giving a new significance to some of the terms of the British North America Act. In the case of the theme of environmental management, when you relate that idea of environmental management to the terms of the British North America Act, you confront, as I think Dale Gibson admits in some cases, a considerable number of uncertainties and ambiguities which the constitutional survey and

discussions will have to eliminate, else there will be constitutional issues of some complexity emerging in the next decade. I do not think I need to say anything more, Mr. Chairman.

MR. GREATHED: I would like to add a footnote to what Dr. Brady has said, Mr. Chairman, that I think he was being extremely modest about the admittedly small group which was able to be here that day. The staff of three of the branches of the Policy and Planning Division were here and were participating in discussions on the review process, on the capital market question and on environmental management.

PROFESSOR BRADY: I am sorry, Ed. I am afraid I did not mention that.

MR. GREATHED: No, what I really wanted to say, Dr. Brady, was that I think that every member of the staff commented afterwards that this was an extremely helpful session, because it did raise a variety of questions which, interestingly enough, came to the fore only a day later when we got the federal capital markets paper, which is an indication of how rapidly things tend to move in this area. We did not have the federal capital markets paper in front of us on August 24th, and we only had this brief outline on environmental management, but we were enormously assisted by the three members of this Committee in that discussion because, in a way, they prep-ed us and prepared us for

commentary that we had to prepare for the Continuing Committee of Officials meeting a week later.

THE CHAIRMAN: Then I suppose we should get into some of the details here on these two papers. It might assist us further in the presence of everyone here, for the preparation for the meeting next week.

Since there has been a greater opportunity to deal with environmental management, I suggest we go into that one first, and follow up with this other one. Has everyone got before them the document in question?

MR. GREATHED: I think, John, perhaps you are the exception because the mails did not get to you, but I think everyone has a copy of that outline. Do you have a copy of the outline?

MR. DICK: I am sorry, I came from the other office and I do not have all that material.

MR. PERRY: I didn't get the environmental one. I got the other one but not that one.

THE CHAIRMAN: Dated August 12th?

MR. GREATHED: David, could you see if you could get us a copy of that?

Mr. Chairman, I might just simply introduce this discussion by saying that the problems that we have run into the constitutional review, at least in the Continuing Committee of Officials, in discussing this question, have really centred

around the problems of separating our proposals that might be made with respect to a revised distribution of powers (including this immense field of environmental management); separating this matter out from the many operational problems and the operational concerns that the government have with the whole variety of environmental management questions.

I think it is safe to say (and Don can add to this or amend it as he sees fit) that this has been one of the great problems, to keep the focus on what the review process has been trying to do, what the terms of reference of the review process are. What we are trying to do now, in our preparation for next week, is to focus attention on the constitutional problem and how that might possibly be settled in a revised constitution.

I suppose, in a way, the obvious way that a subject like this can be treated would be exclusively federal, exclusively provincial, or some form of concurrency. I think, given the nature of the subject, given the kind of conference which is going on right now out at the Ontario Science Centre (the Great Lakes Environmental Conference), given the very mixed situation amongst jurisdictions on this question: it is likely that a subject like this will have to find its way into some concurrent area.

This raises questions of paramountcy;

it raises questions too of delegation both of administrative and legislative , and, quite frankly, those questions have not been explored that fully by anyone.

What we are trying to do now is to raise a number of questions and comments with the object of trying to help the Prime Ministers to focus their attention on this aspect of environmental management. Because the temptation at the officials' level -- and I think this is perhaps true among the politicians who are concerned so much with the pressing operational questions with which they are confronted; the temptation is to drift off into the operational questions, and I do not think the constitutional review process is really the forum in which these questions should be discussed.

So that, in a nutshell, this is the kind of problem that we are faced with in discussing this question; and I think that if any members of the Committee have anything to add to what we might say in terms of questions of paramountcy, or in terms of the administrative or legislative delegation in this field, I am sure the staff would greatly benefit from them.

I think that we are in the dark almost as much as anyone else on this, and we certainly have not had any indication from any government around the table that they have gone further in their thinking in this matter than what I have just

described.

PROFESSOR CONWAY: Ed, who is represented at the meeting at the Science Centre on Great Lakes environmental problems?

MR. GREATHED: If I recall correctly, the Provinces of Ontario, Quebec and Manitoba, and the federal government of Canada. I am not absolutely sure. Don asked me this question last night, and I could not find the answer right away. I think there are representatives from the U.S. federal government, and there are representatives from all the states bordering on the Great Lakes. Tomorrow I think there will be five governors from the, is it, eight states?

THE CHAIRMAN: Eight states.

MR. GREATHED: Five of the eight governors will be here to have discussions with Mr. Robarts and Mr. Kerr on this question. Today the officials are meeting to iron out some of the agenda problems which the Prime Ministers and Governors will have tomorrow.

Don, was that your understanding of the environmental management question, as you see it?

MR. STEVENSON: Yes. If you like, I could say a word or two about this federal paper and the way the discussion went. There wasn't as much time spent on this question of environmental management as on capital markets; partly because the form of the federal paper made it rather

difficult to zero in on constitutional questions.

We had a technical expert who basically prepared the federal paper, give a long, technical explanation of some of the problems of regional development, pollution and so on, and some of the problems that we have facing us for the next generation or so; but, again, we were concerned that it would be hard to get the Prime Ministers involved in discussions on the constitution with this background. So what we did was try to get the discussion focussed as much as possible on pages 14 and 15 of this paper, which are entitled: "Some General Considerations Relating to the Constitution."

The earlier part of the paper, I think, pointed out clearly that in the subject of environmental management one really should talk about two broad areas probably: one area on urban and regional planning with its implications for zoning, land use, housing problems, sewage problems and so on, which really covers a broad framework of planning the environment, but the other one, more specifically the problem that is arousing some controversy now, is the question of pollution. We were trying to get some indications of at least a preliminary position from the federal people as to what this meant in their view as to constitutional provisions or changes from the current constitution.

I think the two key points that came out from this paper and from the discussion, and certainly

the views of various federal people, was that the background, the discussion of the technological problems, pointed out that almost all of these areas are inter-dependent and would continue to be even more so in the future and would affect all levels of government.

The other point that they were making was that there was, therefore, a need in any constitutional arrangement, to provide for as much flexibility as possible. This would suggest some form of concurrency of powers, but if there were concurrency of powers, then there would obviously be some difficult questions about the form in which any constitutional provisions should be written in.

I got the clear impression that the federal people would like to see specific references to subjects such as pollution and urban and regional planning, with some degree of concurrency applied to each.

When it came to a question of how you deal with the concurrent power in terms of paramountcy, this kind of thing, there was a brief discussion on several options in this area, one being administrative and legislative delegation, another being responsibility of federal remedial legislation if there was a federal view that provincial legislation was not meeting basic standards in the area. There was not really very much more on that.

PROFESSOR BRADY: Any discussion on cooperative mechanisms?

MR. STEVENSON: One thing I might add on this is that we did table at the meeting last week a formal Ontario paper on inter-governmental machinery, which the Advisory Committee has been through, I think, both in large and small groups. This paper had been cleared through with the Prime Minister and Treasurer earlier on last month.

PROFESSOR LEDERMAN: That is the one we worked on in June.

MR. STEVENSON: That is right, and this is now formally part of the record of the Committee of Officials on the constitution. It is not on the agenda for the meeting next week of Prime Ministers.

PROFESSOR SYMONS: Will it become a public paper next week?

MR. GREATHED: No.

MR. STEVENSON: I doubt it, but it would be, I think, by the time the next Prime Ministers' meeting comes around.

THE CHAIRMAN: I think on that point, Don, it might be helpful to distinguish the new method, for which I think our Ontario delegation can take some credit. As you recall, at an earlier stage we had fallen into a habit of being presented with a red, white and black book on the subject by the federal government some two or three days before

a conference, and particularly before an open conference; whereupon the Premiers were in the position of reacting to this thing openly and without much opportunity for technical or political preparation. We have taken the view throughout that this is not only not a good technique, but also it is not likely to be the most productive method of approach, and it would be much better to have papers prepared that are, in the first instance, discussion papers, and that open up the territory of the subject, so that everyone may be fully informed on the content of the area and on the options and so on; and then lead on to discussions of changes that might come about, without premature confrontation.

So that, as a result, these papers on environmental management and financial institutions are for that internal discussion purpose at this stage.

MR. GREATHED: I might also add, Mr. Chairman, to your remarks and those of Don, that the paper on machinery, copies of which will be sent to members of the Advisory Committee, was a paper submitted by the Ontario delegation. Again, this simply reinforces Ian's point and our belief that, rather than presenting formal government statements on each occasion, that the delegation should feel free to exchange views, and so on, and then come back to their governments with a summary

of the major issues and the major divisions and major problems, and then leave it to the individual governments to decide how they want to go about it.

As Ian has indicated, and as Rendell so well knows, we have fought this battle ever since the first meeting of the C.C.O., and I think it is now fairly accepted practice within the Committee.

PROFESSOR SYMONS: I wonder, Mr. Chairman, if those of you in the Advisory Committee at any rate would not want to really congratulate you and the secretariat; because this seems to me a very significant development and one which you have been after for some time. Until you explained it at this moment, I had not realized the success that you had achieved in bringing about this more flexible approach.

THE CHAIRMAN: Well, we are very happy about it. As I say, we had somewhat despaired and, frankly, we found that at coffee breaks we got a lot of support from the other provinces, but this never found its way to the table, which was rather discouraging as well; but at the last meeting Mr. Bryce in particular, I believe, recognized the point that we had made in this regard, and I do think it is simply going to defuse a lot of the discussions from, as I say, premature confrontation.

Of course, overriding the whole thing is

the great unknown which may become clear next week, and this is another point that we have stressed in the officials' meeting: that we believe that the Prime Ministers and Premiers next week should attempt a very hard-headed appraisal of what the urgency is and what the timetable might be, and where the exercise is going.

For example, if the pressure appears to be off at this point in Quebec, then this perhaps changes the priority of constitutional discussion vis-a-vis other questions that the Prime Ministers have to discuss, and that many of the Premiers are pressing should be discussed.

As you know, a lot of the ill-temper of the exercise has been related to the impatience of many Premiers who are saying: "We have problems of freight rates, problems of inflation, problems with wheat. When are we going to get at these things?"; the realities being that there is only so much time in which to get together and, therefore, if a high priority on this constitutional exercise is a matter of keeping the country together or not, that is one thing; but if it is something that is not as urgent but nonetheless should continue to go on, then that is another thing. We rather hope that some square facing of that question might take place next week; because I think unfairly in the public mind, perhaps created by the press, this issue has been flogged that the exercise is going

nowhere and it is slow and cumbersome, which may or may not be the case, but it can only be true relative to the question of urgency, and the question is: What is the urgency? Now, with the new government in Quebec, they presumably will speak to that or will give an impression about that.

PROF. SYMONS: I think some discussion too is invited, in fact prompted, by the foreword in the other paper we have been looking at this afternoon.

Just seeing Mr. Bryce's (I presume) statement in print in the first instance in the foreword rather brought me up sharply. He reminded one that because the first constitutional conference in February, 1968, had "agreed to undertake a complete review of the constitution of Canada" which I thought was perhaps a sweeping and extreme way to describe what was actually agreed upon at that conference, as I recall it; but it really does pose the question two years later: are we still agreed upon undertaking a complete review? Is that what was agreed upon? If so, is it not time to re-assess it and to develop a schedule of priorities? I think the question is put by the federal paper.

THE CHAIRMAN: Yes, it's true.

PROFESSOR LEDERMAN: Mr. Chairman, I am most interested in the choice of these topics as the gist of the forthcoming conference. Was this an agreed thing or did the federal people really

choose this?

THE CHAIRMAN: No.

PROFESSOR LEDERMAN: Just as a point of information, and I am not leading up to anything sinister.

THE CHAIRMAN: The only answer to that is this, and I am not saying this in any critical sense at all, because this is a factual statement and I think it is quite understandable; we, in the meeting at Banff did raise the question not so much about the environmental subject because there was a background arising out of the Canada Water Act discussions and, of course, the importance of this issue in the public mind which I think afforded in everyone's mind the fact that the environmental question had some priority; but we asked the question about why the financial institutions? Was there some logic to bringing this matter forward next and at this stage? The only answer to that was, quite frankly, that this is an area in which they had done a lot of work and had a lot of work in process.

As I say, I do not say that critically, because it is quite understandable that everyone knows the exigencies of their material; but this was the only basis for that particular subject.

PROFESSOR LEDERMAN: Anyway, you see, to me the characteristic of both of the subjects is that they illustrate really how little you can

accomplish by re-writing general terms in the constitution in relation to broad sweeping problem areas of this kind. I am afraid I am repeating myself. I have said this at the last two meetings, and I say it again. As long as we have a federal country, you cannot give environmental management, for instance, exclusively or entirely to one level of government or the other; because the minute you do that, you abolish the federal constitution.

The term is so sweeping. What is in environmental management or cannot be put under that heading?

The capital market and financial institutions, as the outline quite properly demonstrates, is just about as sweeping.

It follows from that that if you are going to have a federal constitution at all, if you are going to have a federal Parliament with significant powers, if you are going to have provincial Legislatures also with significant powers - and if you are going to have a federal constitution at all, they are both going to be in the environmental management act and they are both going to be in the capital market and financial institutions act. So there is no way of drafting yourself out of that situation.

This is what I would call the Marcel Faribeu fallacy, that if you can just draft the right document, somehow it is all ---

THE CHAIRMAN: I once said that to Mr. Faribeu and he said that was merely the workings of the Anglo-Saxon mind.

PROF. LEDERMAN:

/If I can take a minute or so more, Ed was pointing out to us that in these discussions you were constantly finding that you could not separate out the purely constitutional question of what phrases and words should be used to allow powers, from the nature of the problems and the nature of the solutions that are to be applied to them. Of course, you cannot, and that is precisely what you are distributing in a distribution of powers. One is bound to lead to the other. You cannot talk about property and civil rights or about banking or about financial institutions, without talking about what should be done about financial institutions; because it is a distribution of governmental powers to do something about them that you are dealing with and you have to talk in terms of the solutions.

That essential connection between the nature of the problems and their solution on the one hand, and the phrases in the constitution on the other, it is the making of that connection that is functional federalism.

I just make one more point here, or a couple more. First, I do not think that you should equate cooperative federalism entirely with formal concurrency and its problems or with the

possibilities of delegation either administrative or legislative. Concurrency, with its problems of provincial or federal paramountcy in the background, or inter-governmental delegation either at the administrative or legislative level - those are devices of cooperative federalism; but my definition of cooperative federalism would be anything which involves an inter-governmental agreement about the use of their respective powers and resources -- anything.

Now, the federal Parliament may say to a province: "If you agree not to do certain things with your exclusive direct power to taxation, we will agree not to do certain things with our exclusive powers over banking"; and there you have an inter-governmental agreement about the respective uses of exclusive powers. No question of concurrency, no question of paramountcy, no question of delegation: just an agreement to use particular powers or particular resources in a particular way.

So the theme of cooperative federalism runs through all powers and all resources and their nature, and the touchstone is the inter-governmental agreement.

So that leads me to say that the most important constitutional advance that we can look for is development of the institutionalisation of cooperative federalism, and the thing we did last

June is the most important of the whole thing.

By the time you are through reading Dale Gibson's paper and Mr. Bryce's paper on the capital markets and so on, what they say to me in those two papers is: "You might as well leave the constitution pretty well as it is, perhaps with a few minor adjustments here and there"; that you might as well leave it pretty much as it is and shift your focus to the institutionalisation of cooperative federalism and inter-governmental agreements.

MR. GREATHED: Written agreements?

PROFESSOR LEDERMAN: Yes. Well, I think the thing is becoming so complex that they ought to be written, simply because there ought to be a record, so that you cannot argue about what was agreed to, or that if you do argue you can have an authoritative interpretation.

As I have said before, you have the very general phrases in the constitution; you get the specifics in the inter-governmental agreements which are flexible because you can revise them every five years or something of that kind; but start juggling the existing powers and you create as many problems as you solve. The thing to do is to forget about much change in the basic powers, but to concentrate on the institutions of cooperative federalism in the broadest sense, over the whole range of governments, and on a sophistication of inter-governmental agreements.

This alone would be major constitutional change, and the fact that you are edging the federal government towards this mood where you now have them, instead of throwing take-it-or-leave-it papers on the table three days before a conference, you have them putting in discussion outlines at a much earlier stage and being more open about it, this is preparing the way for the very kind of thing I am talking about.

Unless we come to that we cannot solve these problems -- or we cannot solve these problems unless we abolish the federal constitution and go to a unitary state. You can solve them that way, but if we are going to have a federal constitution then you have to forget about playing around with the very much general phrases in the B.N.A. Act and you have to concentrate on the institutionalisation of cooperative federalism. I see no alternative. If the focus can just be shifted to this, fine.

The provincial Premiers are right when they say: "Let us talk about wheat and freight rates and how you treat sewage and so on; let us talk about what is the right thing to do, and then after that let us take the constitution as datum, as something given." Those are Mr. Trudeau's words, and they appear in several places in his writings. Address the problem first, decide what ought to be done, then look at the constitution and

say who should be doing what. You may well say: "Well, the city sewage plants will have to be under provincial jurisdiction, but air pollution is going to have to be under federal jurisdiction" and this kind of thing.

MR. GREATHED: Mr. Chairman, could I just ask Professor Lederman two questions arising out of what he said?

First, do I take it correctly that you are suggesting we are barking up the wrong tree looking at the question of environmental management from the point of view of concurrency, or from the point of view of the issue of paramountcy, from the point of view of administrative or legislative delegation?

Secondly, in concentrating, as you suggest, on formal inter-governmental agreements, do you see this as a way around the kind of situation which I think the federation has been confronted with in the past five or ten years particularly, with very sweeping statutes passed by Parliament? I think of The Canada Water Act as one recent instance in connection with the subject we are talking about, which does confront the provinces with some very real problems in connection with their operating programmes and potentially does allow, through the very watered use of the federal spending power or the criminal power or whatever, the federal Parliament to pass such statutes.

PROFESSOR LEDERMAN: No, I am saying that concurrency invites inter-governmental agreements, which is realistic; so it may be realistic and proper to establish some form of concurrency.

There is all kinds of implied concurrency anyway. It is not just Section 95, agriculture and immigration.

So all I am saying is that it would be wrong to talk of concurrency, paramountcy and delegation (the techniques) as if these were all there were to cooperative federalism, and as if this was all it was about. If you get bogged down in those techniques as the story of cooperative federalism, you are barking up the wrong tree. They are merely techniques.

MR. GREATHED: They are techniques, but presumably in the terms of the constitutional review process the Prime Ministers and Premiers had said: "Review the constitution" and, presumably as part of this, "Make suggestions where it might be improved and brought up to date." So we are faced with a subject like environmental management which, needless to say, receives no mention in the present Act. We are faced with the very practical problem of what kind of recommendation might you make to the politicians about the placing of a subject like that in an amended, wholly revised or whatever, written constitution.

PROFESSOR LEDERMAN: All right, you say it breaks down mainly into two things -- urban and regional planning and pollution and anti-pollution measures.

MR. GREATHED: That is the federal definition.

PROFESSOR LEDERMAN: Well, what I am saying is that what you have to do is get down to the specifics of urban and regional planning. Under existing powers, the main hold of the federal government on urban and regional planning is its spending power, its power over inter-provincial and international communications, transportation; and these are extremely important powers which give it a hold of the field. The municipal institutions clause in the provincial powers give the province the main regulation-making role in the field. However, neither can ignore the other, and you cannot have a complete, successful provincial plan without integrated federal collaboration of their use of the spending powers for mortgage and housing, airports, seaports, railways, and so on; and the federal people will be throwing their money down the drain unless the province is engaged in successful urban planning, successful land control, and so on. So there has to be a detailed agreement about each doing what it is now responsible for doing and what it has power to do.

What I am saying is that shuffle these powers about as much as you wish, and you will still end up having to face the problem I am talking about -- unless in the process of shuffling them about you abolish the federal constitution.

PROFESSOR BRADY: Isn't there one step would have to be taken before you reach the agreement? I could not agree more with your general argument on the necessity for the cooperative mechanism and the written agreement, but is the language of the British North America Act really of any particular application to the facts today in the technology of today? In other words, mustn't you, before coming to make such agreements, do something about the actual language? That is contemplated certainly in the constitutional review. It would seem to be implied in some of the arguments of the federal people in their main papers, that they are thinking in terms of language. I would think it becomes somewhat necessary. A paper like Dale Gibson's, I think, illustrates that, if I am understanding it correctly.

This is not altering your general point, Bill, with which I wholly agree, but you still have the document to look at and do something about.

PROFESSOR LEDERMAN: But have you really improved the document by exchanging one rather general phrase for another? Have you really made an improvement over banking, savings

banks, incorporation of banks, interest and so on by introducing the word "credit" at some stage?

PROFESSOR BRADY: You may not by that given word, but isn't it possible to get more meaningful words today to describe what is referred to?

MR. PERRY: I would like your comment on this question, Alec, but I am wondering if Bill could assure us on this, which probably gets to the nub of the problem: that before you are going to institutionalise arrangements you have to be fairly clear as to what the respective powers and duties are of the people who are going to enter into these arrangements.

PROFESSOR LEDERMAN: Yes.

MR. PERRY: And can it be said of every subject under the sun that this sort of assessment or appraisal can be made under the present B.N.A. Act? I mean, assuming that with all the best will in the world you are going to make inter-governmental arrangements and agreements your main vehicle.

Surely, first of all you have to assess what has to be done, what powers have to be shared, how they are shared at the present time. Isn't this the raw material?

PROFESSOR LEDERMAN: I am not denying that. In fact I made that basic point at the beginning of my article on cooperative federalism, that when you have governments bargaining the terms in which they

bargain are set by their basic powers, and the definition of basic powers is in the constitution.

All I am saying is that by changing the word "credit" for banking, or having the word "credit", you have done that much to remove uncertainties. I am not saying there cannot be some improvement in the wording of the Act.

For instance, in the banking paper I like the emphasis on functions and transactions, with which they have gotten away at last from the idea that whoever incorporates controls completely what is going on. We are out of that bind, apparently. The emphasis on functions and transactions is a healthy one, I think.

Perhaps if you could draft a clause on the territorial basis they are proposing for financial institutions other than banks and for securities, and you drafted it on a territorial basis only so that a transaction between two persons within a province falls under provincial jurisdiction, but between a person in a province and a person outside the province falls under federal jurisdiction, well, that is all well and good. Say, you adopt that proposal. How much have you really clarified? Can you go to the Toronto Stock Exchange today and differentiate those transactions as intra and extra-provincial transactions? I will wager you cannot, that you just cannot unscramble the egg.

MR. DICK: Ask Bell Telephone!

MR. PERRY: Haven't you clarified it at least to the extent that you know that this is the egg you are trying to unscramble, rather than some other egg?

THE CHAIRMAN: Chicken egg or goose egg?
(Laughter)

PROFESSOR LEDERMAN: Suppose you do divide federal and provincial powers over securities transactions in that way on a strictly territorial basis. Now, some of the shares of the Good Fortune Investment Company are going to be sold by the company in Ontario to Ontario residents; some of them are going to be sold by the company in Ontario to Quebec and New York State residents. Is the regulation of the sale of that single set of securities going to be caught two ways because of the territorial thing? Either this means you have not solved anything and you have not made it any better than it is now, or it means that on those new terms, those territorial terms, you must have inter-governmental agreements. The federal people will say: "We will use our powers over inter-provincial and international transactions in a certain way, if you in a complementary way deal with the internal transactions."

So it illustrates what I am saying to you. Your territorial principle does not solve anything in the real world unless you have these inter-governmental agreements.

MR. PERRY: But doesn't it define the area in which you are going to have inter-governmental agreement?

PROFESSOR LEDERMAN: Sure it does.

MR. PERRY: To me this is something.

PROFESSOR LEDERMAN: All right, you can have it now; you can have your inter-governmental agreement now.

MR. PERRY: If you are going to assure us every area can be made so clear, that the issues can be sort of reduced to an agreement, I think we can go home.

PROFESSOR LEDERMAN: I don't think, Harvey, that any of these areas are all that clear or that they can be made that clear. The only way you can clarify it is to get down to specifics on your inter-governmental agreements.

It may well be that the federal government with its power over finance now and its criminal law powers, if we take in its power over banks and banking, can go a long way. It has got enough of a foothold now to get inter-provincial and international control into specific inter-governmental agreements.

PROFESSOR CONWAY: Would you say the British North America Act then is based upon the notion that government of Canada should be by inter-governmental agreement?

PROFESSOR LEDERMAN: Well, that can

only be part of the picture.

PROFESSOR CONWAY: Was this concept of yours, which sounds very sensible to me, was this in the minds of the people who drafted the British North America Act?

PROFESSOR LEDERMAN: No, because life was much simpler in those days.

MR. DICK: I beg to differ. I think there was, if I can just interject because of the expressions in the negative of my friends here; because on the other side was it not the design of the British North America Act to achieve a balance and not vest in either government really such strength that they lead to the fracturing or confrontation that they had to the south of us?

You mentioned those certain areas and so on, Bill, of the exclusive so-called federal jurisdiction, but you can take property and civil rights in a province and inject that into any one of them. We do that continually now in Bills -- the Canada Corporations Act. The Senate of Canada is now inviting the parties of the province to contest the constitutional validity of certain provisions of the Canada Corporations Act, such as insider trading, on the basis that it is an infringement of property and civil rights which is applicable to the province.

I am very sympathetic to Bill's submission. We had stressed all along that inter-governmental

machinery is the best one of the ultimate solutions to all the complicated problems we are getting into in the distribution of powers; because no matter how you word it, no matter what language you use, we could, with the best of up-to-date modern language, end up in the same confrontation and the same areas of disagreement today if we haven't got the viable machinery that gives us the cooperative federalism, and, whether it be in securities legislation, property and civil rights, will eternally be flowing over into areas of trade and commerce or whatever we give federal power under. If we have not got the machinery to lead to the cooperative (whether by agreement or whatever other way) changing of the distribution of powers, redefinition to modern language, more meaningful language in today's trends, we are going to have the same mess as we have now.

I like Bill's submission. I think it supports wholly what we have been struggling with over the years, and that it perhaps highlights the need for inter-governmental machinery in the context of cooperative federalism as distinct from meaningful but, I think, perhaps Utopian redefinition of distribution of powers.

THE CHAIRMAN: Except, Rendell, if I may just add to that, it does impose an obligation that the machinery be sufficiently explicit that it meets the political reality that the politicians are

obliged to follow that route; because there is another element in this that hangs over it, and that is the spending power and the taxing power; that if you have the resources there will be a strong temptation to find a way around the machinery.

I think, again, this is why we, as I say, put so much stress on a really effective working-over of the machinery, because it has to be effective or it will be circumvented, obviously.

PROFESSOR LEDERMAN: There is an even bigger question mark than that, Ian, that hangs over it, the basic political one: Can ten provincial governments and the federal government accomplish enough agreement to make a system like this work politically? Because, naturally, depending on how they succeed in satisfying their electorates or how far they fail to satisfy their electorates, this is life and death for a government.

Am I being politically realistic when I urge this as the solution? Well, I hope I am, because I can see no other way except a unitary state. I think I am, because there will be great pressure on the premiers of whatever party and federal leaders of whatever party, to agree with one another on things that are bothering the public, because if they do not the voter will vote against them at the next election and he won't care what the party label is. He will put them both out,

federal and provincial. There is a pressure there in the common electorate. The federal and provincial governments and politicians are responding to the same people province by province, the same taxpayer, the same voter, province by province. I think there is enough pressure there to put a real hope into this alternative.

THE CHAIRMAN: Except, Bill, that the citizen does not care which government does it, does he? The politicians may know by agreement who is to do the job, but the citizens, if they don't, keep pushing both ways.

PROFESSOR BRADY: They do not understand, nor do they sympathise very much with federalism, really.

THE CHAIRMAN: How long is one politician going to be pushed to do something to deal with problem X that by agreement they are not going to deal with? How long is he going to withstand that pressure, particularly if he has a spending power or capacity to do it?

PROFESSOR LEDERMAN: These are very real problems and, as I say, they are question marks on what I am saying, but I hope they are not fatal question marks because if they are we are going to witness either the slower or rapid demise of Canadian federalism.

MR. GREATHED: The other comment in this connection, Mr. Chairman, and perhaps it is worth

conveying this to the Advisory Committee which laboured so hard on the machinery paper, is really the reaction we got to the paper when it was tabled by our colleagues in the Continuing Committee.

We did have a discussion of it. Don, you can correct me if I am wrong here, but my impression was very distinctly that they thought what we thought to be a very modest set of recommendations in terms of former machinery, went perhaps further than was desirable. I think this was the gist.

Now, how they are going to react on this, there are some more sophisticated notions, I think, that they have in mind. I think, for example, what we should expect out of consultation and so on is a question worthy of further examination; but in terms of the formal machinery that we were seeking as the minimum to guarantee that this consultation goes on, I think at least (I should ^{among} emphasise this)/our federal counterparts in Ottawa there is some feeling that it is maybe more than is necessary.

PROFESSOR CONWAY: What about your provincial counterparts?

MR. GREATHED: We had a lot of questions directed at us, but none of a particularly critical nature, in the correct sense of that word. Some of them I do not think have spent the time on the paper that other people had, but those questions

which came to us were not of a negative kind.

PROFESSOR LEDERMAN: The reason for my earlier question to you, Mr. Chairman, about why these two topics, was that they are two topics which are admirably calculated to demonstrate the complexity of a division of powers system and the complexity of a federal system. I wonder whether this is not what the federal people wanted to demonstrate.

THE CHAIRMAN: I am sure that is part. This discussion we are having, I might say, from our point of view is very, very helpful and important, because I am sure the first item on the agenda, as I have mentioned, is the constitutional review process. On the one hand, it is a wellknown fact that the Prime Minister of Canada is impatient to get on with this exercise that has been embarked upon; on the other hand, it is a wellknown fact that many of the Premiers are impatient with the fact that we are engaged in the exercise. I am sure, Rendell, don't you think, that right away next Monday this question is going to have to be faced; but, looking back two years now, what is it we are trying to do? Are we really trying to re-write the constitution, or are we trying to find ways of making federalism work better?

PROFESSOR CONWAY: It seems to me, Mr. Chairman, that what we have been discussing over the past half or three-quarters of an hour, is not

changing the constitution, but the method of changing the constitution. This first paper suggests that the whole thing be re-written, but Professor Lederman has been saying that this is the way it should be changed.

As a student of Canadian history, I am pretty sure that the Fathers of Confederation did not have this idea of the government of Canada in their minds when that constitution was drafted. So if we are going to change the constitution by these ad hoc steps, that is great. It may make it unnecessary to re-write it, and then we can save time arguing about abstract ideas of political thought and that sort of thing; but certainly in historical terms that is changing the British North America Act.

PROFESSOR LEDERMAN: I agree with you basically that to establish the inter-governmental machinery and to work much more by inter-governmental agreements as I am arguing, this is a very significant, very important constitutional change. I think it is on the basis of the old powers, but it is a new use of the old powers.

PROFESSOR CONWAY: Do you think the present constitution, the B.N.A. Act, could cover all contingencies?

PROFESSOR LEDERMAN: It is one of the principles of judicial interpretation that all powers and responsibilities are distributed, and when the

Courts are confronted with a jurisdictional problem it is their duty to locate it one place or the other. So the theory of the constitution is that there is nothing for which some government is not responsible in the range of things that it is possible for governments to do.

PROFESSOR SYMONS: Mr. Chairman, I think Professor Lederman has done a tremendous service ^{this} by raising/conceptual question in the way he has done at this point and with such tremendous clarity. I wonder whether, when this arrives -- and I should think you are right that it is really the first question that ought to come up, at any rate, at the conference next week -- whether at that point Ontario's representatives who have perhaps done the most preparation in terms of thought on the matter of inter-governmental machinery, ought not to speak pretty directly on this matter, citing the fact that the two major substantive elements on the agenda illustrate the need to have adequate inter-governmental machinery; and, if so, whether it is not worth considering even getting the permission of the Chair to introduce the paper that has been prepared on inter-governmental machinery, as an example of the thinking of one key province on this matter. This may just not be possible in terms of the way the Chairman wishes to proceed, but I think Bill has put it so well and it is such a critical point, that probably

this is something Ontario should do under Item 1 of the agenda.

DR. FORSEY: Mr. Chairman, may I put in my two pennyworth at this point. In this financial institutions and capital markets set of proposals, there appear to be four specific suggestions made about changes in the British North America Act. I think it might be well just to look at each of those for a moment or two, to see whether they are, in the judgment of this Committee, wise or unwise.

The first one is on page 15, paragraph 59 where it says that the Government of Canada proposes that the power of Parliament to legislate on savings banks should be dropped in the revision of the constitution, as this deals with financial institutions operating within a province. That seems to me, I must say, a sensible proposal.

The next one is paragraph 63, where the Government proposes that there should be in the constitution explicit concurrent powers over credit, and so forth. That is in the context, I think, of paragraphs 60 and 61, more especially perhaps 61. It seems to me that there is strong reason, in the light of paragraph 61 and in the light of the questions that have arisen in connection with inflation, for adding to the power

of the Parliament of Canada a concurrent power over credit which should be paramount where the legislation of the Parliament of Canada is made for a national or economic purpose -- for example, to supplement monetary and fiscal measures for the purpose of economic stabilisation.

It seems to me that we heard talk about control of consumer credit and anti-inflationary measures, and it was then rather dropped, and it was supposed to be dropped because it was not of sufficient importance; but there was some indication, I think, here last time when we were meeting on August 24th, that that was not the real reason. They just discovered they were in a dubious position about their powers in the matter. I would think that there is some reason for the conclusion or suggestion No. 2 in paragraph 63.

Next, 66:

"The Government of Canada proposes that
 "in a revised constitution Parliament
 "should have exclusive power to regulate
 "financial institutions other than banks
 "which carry on business in two or more
 "provinces or internationally"

It seems to me that that is fairly clear. I do not think it runs into the difficulties that Professor Lederman has indicated about the regulation of the securities market. That seems to be fairly clear and it seems to me a sensible

proposal.

When you get to the fourth proposal,
paragraph 72:

"Parliament should be given specific
"power to make laws relating to the sale
"of securities from a vendor residing in
"one province to a purchaser residing
"outside the province and relating to
"the issue of securities which are not
"restricted for sale only to purchasers
"residing in the province of issue"

There, it seems to me, you do get into
some of the difficulties of unscrambling the egg
that Professor Lederman has dwelt upon so eloquently
and lucidly.

The other three suggestions do not seem to
me to run into the same difficulties, and I invite
the comment of those learned in the law on these
particular points.

I am still inclined to think, mind you,
that what we need, in regard to the regulation of
the securities market, is something like the S.E.C.
in the United States. I think leaving this thing
to the provinces is not likely to work out
successfully in the long run. I do not think that
the rather complicated arrangements proposed under
CANSEC would work as well as a simpler and more
direct method; but I can see that the proposal there
in the last paragraph I was mentioning does run

into difficulties that I do not see that there are in the others.

MR. STEVENSON: There is, Mr. Chairman, a problem in the previous one also, the territorial division potentially between federal and provincial regulation of financial institutions; because there are a number of different ways of defining how you can say you are carrying on business in one or more province. A broad definition might mean you have to have a permanent establishment in the other province in which case, of course, you would get fewer institutions under federal jurisdiction than if it is purely an institution that has some business dealings across provincial boundaries. It is a similar situation as opposed to inter-provincial trucking, in a way, where you could, if you had a very wide definition, really put under federal jurisdiction almost all financial institutions because they may be carrying on some transactions across the provincial boundary.

PROFESSOR LEDERMAN: It is a matter of balancing things out. You have certain problems now under what the constitution says and what it omits to say. I am not saying that one should never touch the constitution, never re-write any part of it. I am saying that if you are going to make this type of change -- and there are four specific proposals here which Eugene has outlined --

then you should ask yourself what are the new problems of definition that you are going to have ---

DR. FORSEY: Yes.

PROFESSOR LEDERMAN: If we use these new phrases rather than the old ones. It may be that they will not be as bad and will be more congruent with modern conditions than the problems we got under the old phrases. In those circumstances it would be a good thing to turn to the new proposals, but not with any idea that you are going to escape the basic problems of definition. You will have new problems of definition, as

Don has just been pointing out; new problems that arise, but they may not be as bad as the old ones.

MR. DICK: Wouldn't it lead to that then in the sense that Ian has mentioned? I am sure it is going to happen -- the western provinces are going to move directly to their problems in comparing them with the constitutional review; but all of those problems that they are going to raise -- and pollution is one which the public of this country is not going to permit us to put off in some constitutional dispute. If you look at pollution, there are obviously methods which are already being used and which will be used to overcome that particular problem and concern.

Now, once you have seen the problem and the provinces have sat down with the federal government and isolated their various responsibilities

under the existing Act, what they can do and what the federal government can do, then it will put into highlight those areas in the constitution which may be deficient to permit either delegation or something else. Then you go to the relative parts of your constitution which will then require specific amendment to deal with it.

PROFESSOR LEDERMAN: Exactly; you start with the problem, not with the constitution.

MR. DICK: Right, you start with the problem. I am not sure that what this might not be as strong a suggestion, a viable method for Ontario to put forward as something that would bring together the problems of the other provinces aside from constitutional review, but bring them into the constitutional review concept. "Here are the problems. We developed an approach for cooperative federalism by way of inter-governmental cooperation, machinery and government."

Then when we have isolated the problems of what has to be done by agreement, we each then proceed with our jurisdictional responsibilities to carry out our part of the obligation. If either of us is fettered in carrying that out, because of the constitutional restrictions, then we amend those parts or we look at those parts that require amendment in the light of our agreement and our cooperative approach; but this would permit the governments to deal with the problems that transcend

constitutional review but still knitted in with constitutional review.

THE CHAIRMAN: But, you see, the interesting thing about this, Rendell, is it is, I think, exactly where we intended to go at the time of the Confederation of Tomorrow Conference.

The Confederation of Tomorrow Conference was to ask: What are the things that are inhibiting the performance of the federal system in Canada in meeting national goals and so on, and what things do we do? -- whether it is by constitutional amendment or by administrative improvement or by some other form of arrangement, or what have you, to improve these problems? But then, within three months, we were into the Supreme Court, the Senate, fundamental rights, and so on.

DR. FORSEY: Yes, but wait a minute. Who was responsible for all that? Daniel Johnson. You got your Premiers here in Toronto; you opened up a public Pandora's box, which was probably inevitable, but you got them in Toronto and opened Pandora's box and out popped Mr. Johnson with all his proposals for changing everything and re-writing the constitution -- a new constitution. He was only gradually enticed to water it down a bit and say: "Well, revised constitution, anyway."

Let's be fair about this. What you may have intended when you summoned your Confederation

of Tomorrow Conference here may well have been what you just suggested, but once you had summoned it out sprang Mr. Johnson.

THE CHAIRMAN: I wasn't mentioning this to pass judgment, but rather to say that as a result, looking back at what happened, it leads us to the question of going back to the beginning and saying: "Has this gone the right way?" If not, according to the discussion we have had here, how should we now be proceeding?

DR. FORSEY: You are now getting down to the real nub of the thing, the point-by-point examination of the distribution of powers. This is the kind of thing that apparently you have had in mind from the first place, and it is, in my judgment, the kind of thing you ought to have had in mind in the first place and the kind of thing that should have been done; but then you have all this high-faluting theoretical stuff brought in by the Union Nationale government of the Province of Quebec and all the discussion of the Supreme Court, la personnalité internationale de Quebec, the new constitution -- completely new constitution, a republic -- a provincial republic and a national republic, two nations and the whole bag of devil's tricks.

PROFESSOR BRADY: Of course, it is fair to say that the federal government did not commit itself to all those things that you enumerate,

Eugene, but it did commit itself to change in the Senate and Supreme Court and so on. The first red-blue document, for example, had these all suggested.

DR. FORSEY: Quite so, but where did it all come from? It came from the pressure of this infernal crew in Quebec.

PROFESSOR BRADY: I think the infernal crew in Quebec had one very useful emphasis in its papers from the outset, and that was on the necessity for bringing in more cooperative mechanisms. I think it would be interesting to see what the new statement of Quebec aims will be from Mr. Bourassa.

THE CHAIRMAN: It would also help to make a constitutional lawyer Prime Minister of Canada.
(Laughter)

PROFESSOR SYMONS: Mr. Chairman, thinking of Professor Lederman's lucid remarks, is the nub of the problem at this point though a clause-by-clause examination of the distribution of powers, or have we learned that that is part of it; that even a greater part of the nub is the effective working of the federation, and this means more than anything else acceptable, sensible, inter-governmental machinery?

PROFESSOR LEDERMAN: I would say the primary focus should be the current problems of the country problem by problem, and work back from those

problems, in the way that Rendell was suggesting, to the constitutional background of them, and then say: "Well, the powers are adequate if we just agree to use them in a certain way", or say: "The powers are not clear enough. Let us tidy it up and then agree to use the powers in a certain way."

MR. DICK: Just from hearing your comments and those of the other gentlemen, I would say our educational process in the last three years has been to lead us to that conclusion; that we have gone through three years and we have been taken off, as Eugene has said, by perhaps the initial reaction of Quebec that it be a completely new constitution, and in three years we have got to the detailed study of item by item and we have achieved nothing for a better confederation. When the people of Canada look at it, they have gained nothing, in all frankness, from the deliberations that the governments have been carrying on on the constitutional review -- except the education of those who have been engaged in it.

Having gone through that process, if that has been an educational process and if the governments are now faced with these exceedingly important problems of national concern, is it not prudent with the new attitude perhaps in Quebec which we hope to see when we are away from the stress of the "new constitution at any price" down

to the more viable cooperative federalism concept that our Confederation of Tomorrow Conference started and we go to the problems which will be before us with great vehemence, I am sure: that we engross them into an area of continuing constitutional review, starting with governmental machinery to accomplish solutions for those major problems, and then to the constitution, if need be, to revise its meat, these highlighted by governmental machinery and the problems themselves?

THE CHAIRMAN: Let me just mention that we have just had word of this being confirmed, that between three and four we are going to go across and have an hour with the Prime Minister, where the ministers and officials who are going on the delegation next week will be meeting.

There are some things in that discussion, Ed, on which we have to get some guidance from him, particularly in the capital market paper, to complete our briefing book; but it is this very discussion we have had that I hope we can recapture and bring to him, for this reason. As I said, it is the first item on the agenda. The Prime Minister of Ontario, in particular, I think, is going to be expected to give some lead or take some stand on this question. Going back to the Confederation of Tomorrow Conference, the suggestion has been made that Ontario took over, as you say,

Pandora's box, so that we have a continuing interest in giving some leadership on the question of method.

I think when we get over there, the Prime Minister wants to go at it this way. I will try very briefly to recapture the gist of this argument, perhaps asking you, Bill, to fill it out a bit more and others, of course, as you will, bearing in mind that we have not got a lot of time there.

There is another matter related to it, and that is the machinery question. We prepared and we went through in this Committee, as you know, our paper on machinery, and the Prime Minister agreed that this should be tabled as a staff paper at the C.C.O. meeting last meeting, and which was done, and, as Ed said, was discussed. I believe he said, however, that he did not wish it to be a government paper at this point, for the purposes of the meeting next week, but it is possible that in the light of any discussion we have with him this afternoon he may want to reconsider that. In fact, if someone wants to bring up the subject, I think we and the staff advisers would have no objection at all, if you felt that was a proposition worthy of support.

MR. DICK: We will rock the boat any time.

(Laughter)

MR. PERRY: Do we gather the whole Committee is going to move over?

THE CHAIRMAN: Yes.

PROFESSOR CONWAY: Mr. Chairman, you and Ed this afternoon have been using the term regularly "Prime Ministers and Premiers". Is that official usage now?

THE CHAIRMAN: I am old-fashioned in that, I guess, when I came into the Ontario Government in 1965 the documentation of these conferences all used to refer to the "Prime Ministers' and Premiers' meetings".

MR. GREATHED: That is right.

THE CHAIRMAN: Which we took into account, I believe, technically as the Prime Minister of Canada, Prime Minister of Ontario, Prime Minister of Quebec and the other eight Premiers.

MR. GREATHED: Now the Prime Minister of British Columbia.

THE CHAIRMAN: Yes. I am not sure about the origins of that, but in any event the jargon used in the documents we now get is "First Ministers".

PROFESSOR CONWAY: Was the Prime Minister of Ontario always so termed?

PROFESSOR SYMONS: Yes.

MR. GREATHED: As far as I know, yes.

PROFESSOR CONWAY: He was from the beginning? There never was a "Premier of Ontario"; there was always a Prime Minister?

DR. FORSEY: No, no.

MR. DICK: Leslie Frost introduced the

term "Prime Minister".

DR. FORSEY: As a matter of fact, this is all much ado about nothing, because the terms "Premier" and "Prime Minister" are perfectly convertible. In Great Britain the Prime Minister was customarily referred to as the Premier. Sir Wilfred Laurier and Sir John A. Macdonald were referred to as the Premiers. Mr. Asquith was referred to as the Premier.

PROFESSOR BRADY: Walpole was referred to as the Premier.

THE CHAIRMAN: They still use the term there, I see.

DR. FORSEY: It was customary here to refer to the Provincial Premiers. Then somebody got the idea that calling himself "Prime Minister" was hotter stuff, and they talked him into trying to call himself Prime Minister of Canada. Premier of Canada -- Prime Minister. His official title, his statutory title is "First Minister". The person holding the recognized position of "First Minister" is the Senate and House of Commons Act. The rest of it is just blah, blah, blah; it doesn't matter two hoots which you call them. "Prime Minister" doesn't mean any more than "Premier".

MR. GREATHED: This is Mr. Robarts' position. In fact when he was asked in the House once about it he said: "I really don't care. When

I came into the job that was the title that was on the door. I don't care whether you call me Prime Minister or Premier or John. Just let me keep the job".

THE CHAIRMAN: At three o'clock we are to meet with the Prime Minister in the Premier's office to prepare for the First Ministers' conference next week. (Laughter)

Just for the purpose of the record, could I suggest, in our usual fashion, that you make a note of the third Friday of December for our next quarterly meeting, subject to intermediate meetings of the full committee or sub-committees as may be required. December 18th.

DR. FORSEY: About what has gone on in the constitutional review so far, I think it is possible to be a little too severe upon the people concerned and the process concerned. To some extent it was a necessary holding operation, it seems to me. You had a lot of agitation, especially in the Province of Quebec, about this whole business, and until they sobered down it was necessary to go ahead with this consideration of things which really were not of great practical moment, but I don't know that you could very well have avoided it. When you get people with a bee in their bonnet, sometimes you have just got to jolly them along for a certain length of time until you can get the bee out of their bonnet and

get them talking sense.

I think this is what we have been doing. If you had said to Mr. Johnson at the time of the Confederation of Tomorrow Conference, the kind of thing that we have been saying this afternoon, he would have blown his cork and the Province of Quebec would probably have blown its collective cork with it.

When I was talking about the value of the educational process, I was not really thinking of people like the staff of the Secretariat and the Attorney General's department and so forth getting some education (which I think perhaps they do not particularly need, though they may have got a little in the process); what I was thinking of was also the education of the public to some extent, and perhaps particularly of the people in the Province of Quebec and the Legislature of the Province of Quebec. They began to see that there were some other things which needed dealing with rather more urgently than whether they could cut a dash in Nigère or Gabon or wherever it might happen to be, or whether they could make a tremendous splash in Paris, or whether they could have visits from General de Gaulle. Now we are beginning to get down to something like brass tacks, and perhaps we can still learn a lot from the a priori methods of the people in Quebec, but perhaps also they are beginning to discover that the

Anglo-Saxon approach has its points, and that there really is a "bi" in bicultural.

THE CHAIRMAN: Thank you very much.
Does everyone know where the Prime Minister's office is? That is where we had our first meeting. We will go over together and go over at four o'clock to our reception.

-----The meeting adjourned at 3.00 p.m.
